# MISSISSIPPI CODE 1972
*Annotated*

War Veterans and Pensions
Education

(§ 35-1-1 to
§ 37-35-13)

**Titles 35 to 37**

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# MISSISSIPPI CODE

# 1972

*ANNOTATED*

**ADOPTED AS THE OFFICIAL CODE OF THE**
**STATE OF MISSISSIPPI**
**BY THE**
**1972 SESSION OF THE LEGISLATURE**

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## VOLUME TEN

## WAR VETERANS AND PENSIONS

## EDUCATION

## §§ 35-1-1 to 37-35-13

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CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2019 REGULAR LEGISLATIVE SESSION

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# PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

# PUBLISHER'S FOREWORD

This 2019 Replacement Volume 10 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 1996 Replacement Volume 10, the 2001 Replacement Volume 11, the 2007 Replacement Volume 10, and the 2013 Replacement Volume 10, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2019 Regular Legislative Session.

This volume contains the text of Title 35, and the text of Title 37 Chapters 1 to 35 of the Mississippi Code of 1972 Annotated, as amended through the 2019 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals decisions and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

## PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

September 2019 LexisNexis

# User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Code Status
— Comparable Laws from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— History Notes
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— Joint Legislative Committee Notes
— Judicial Decisions
— Opinions of the Attorney General
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

## ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

## ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

## AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted. Amendment notes are retained online indefinitely.

## ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

## CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

## COMPARABLE LAWS FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

## COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

## CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Laws from other States* and *Federal Aspects.*

## EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates.*

## EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

## FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Laws from other States.*

## HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

## INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

## JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

## JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading “Judicial Decisions.” Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called “catchlines.” The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with “In general” first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

## OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

## ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

## PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

## REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

## RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

## STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

## TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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### § 35-1-1. Creation of State Veterans Affairs Board; composition; qualifications, appointment and terms of office of members; officers; meetings.

(1)(a) There is hereby created a State Veterans Affairs Board, which may also be referred to as the "Mississippi Veterans Affairs," to consist of seven (7) members, to be appointed by the Governor, one (1) from each congressional district as they existed on January 1, 1952, of the State of Mississippi. One (1) shall be appointed for one (1) year, another for two (2) years, another for three (3) years, another for four (4) years, another for five (5) years, another for six (6) years, and another for seven (7) years, thus staggered. At the end of such term for each of said seven (7) members, a successor shall be appointed for a term of seven (7) years, thus providing for seven (7) members, one (1) of whom shall be appointed each year. In the event of death, resignation or removal of a member of the board, such person appointed to fill the vacancy shall be a legal resident of the congressional district in which the vacancy shall occur, and shall serve for the remainder of the term to which such member was appointed. Members of the board shall be veterans of any war or police action in which the Armed Forces of the United States have been, are, or shall be committed for action, who have been honorably discharged or honorably released.

(b) From and after May 14, 1992, terms of all members then serving on the State Veterans Affairs Board shall terminate, and the board shall be reconstituted as follows: The board shall consist of seven (7) members. All members shall be appointed by the Governor, with the advice and consent of the Senate. One (1) member shall be appointed from each congressional district as such districts existed on March 1, 1992, and two (2) members shall be appointed from the state at large. Of the initial congressional district appointees to the board, one (1) shall serve for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years and one (1) for a term of five (5) years. Of the initial at-large appointees, one (1) (who shall be that person appointed in January 1992 from the First Congressional District under the provisions of paragraph (a) of this subsection) shall serve for a term of three (3) years and one (1) (who shall be that person appointed in January 1992 from the Seventh Congressional District under the provisions of paragraph (a) of this subsection) shall serve for a term of five (5) years. All appointees after the initial appointees shall serve for terms of five (5) years each. In the event of death, resignation or removal of a member of the board, the vacancy shall be filled by appointment of the Governor, with the advice and consent of the Senate, from the congressional district in which the vacancy occurs, for the length of the unexpired term only. Members of the board shall be honorably discharged or released veterans of any war or police action in which the Armed Forces of the United States have been, are, or shall be committed for action. No state/department commander of any federally recognized veterans organization, no national officer of any federally recognized veterans organization and no member of the Mississippi Council of Veterans Organizations shall be eligible for appointment to the board until the expiration of a period of three (3) years after the termination of their service in such disqualifying positions.

(2) Members of the board shall annually elect as chairman one of their number and another member as vice chairman. Members of the board shall hold regular monthly meetings and such other meetings as may be called by the chairman or the vice chairman in his absence.

(3) Beginning July 1, 2019, any reference in this code to the State Veterans Affairs Board shall also mean the Mississippi Veterans Affairs.

**HISTORY: Codes, 1942, § 7486-01; Laws, 1948, ch. 504, § 1; Laws, 1952, ch. 314, § 1; Laws, 1992, ch. 535, § 1, eff from and after passage (approved May 14, 1992); Laws, 2019, ch. 397, § 1, eff from and after July 1, 2019.**

**Amendment Note —** The 2019 amendment inserted "which may also be referred to as the 'Mississippi Veterans Affairs'" in the first sentence of (1)(a); and added (3).

**Cross References —** Veterans' preference in appointments by the state personnel board, see §§ 25-9-301 through 25-9-305.

Authority for establishment of Mississippi State Veterans home, see § 35-1-19.

Authority for establishment of Mississippi Persian Gulf War Memorial, see § 35-1-43.

**Federal Aspects—** The laws relating to veterans are administered by the United States Department of Veterans Affairs. See 38 USCS §§ 301 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

Because the statute which establishes the State Veterans Affairs Board does not contain specific provisions to define a quorum, a quorum consists of a majority of the board members; further, absent state law or charter providing otherwise, common law prevails over any attempt to alter the requirements for a quorum. Burnham, July 26, 2002, A.G. Op. #02-0400.

## RESEARCH REFERENCES

**Am. Jur.**

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 1, 35 et seq.

## § 35-1-3. Appointment of executive director, deputy director, managers of major functional areas, and managers of state veterans homes.

The State Veterans Affairs Board shall appoint, to serve at the will and pleasure of the board, an executive director, (who shall also serve as Executive Secretary of the State Veterans Affairs Board), a deputy director, individuals to manage each of the agency's major functional areas and individuals to manage each of the state veterans homes. The executive director and deputy director shall be a currently serving member or honorably discharged or honorably released veteran of any active or reserve component branch of the Armed Forces of the United States. The board may establish additional minimum qualifications for agency positions.

**HISTORY: Codes, 1930, §§ 7328, 7329; 1942, § 7486-02; Laws, 1926, ch. 339; Laws, 1942, ch. 322; Laws, 1948, ch. 504, § 2; Laws, 1952, ch. 314, § 2; Laws, 1960, ch. 401; Laws, 1994, ch. 425, § 1; Laws, 1995, ch. 612, § 1; Laws, 1999, ch. 476, § 1; Laws, 2001, ch. 522, § 1, eff from and after July 1, 2001; Laws, 2018, ch. 364, § 1, eff from and after passage (approved March 16, 2018).**

**Editor's Notes —** Laws of 1999, ch. 476, § 5, provides:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws or the Motor Vehicle Ad Valorem Tax Law of 1958 before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the highway privilege tax laws or the Motor Vehicle Ad Valorem Tax Law of 1958 are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Amendment Notes** — The 2018 amendment, effective March 16, 2018, rewrote the second sentence, which read: "The executive director and deputy director shall be honorably discharged or honorably released veterans of the Armed Forces of the United States."

## § 35-1-5. Compensation of members of board and staff.

The members of the State Veterans Affairs Board shall receive no salary but shall be entitled to a per diem allowance in the amount provided in Section 25-3-69 while in attendance at any regular or called meeting of the board or while in the performance of other official duties in connection with the work of the board as authorized or directed by the board. The members of the board shall receive, in addition thereto, actual and necessary expenses as provided by law in the performance of such duties.

The compensation of all employees of the board, including the executive director, deputy director and division directors, shall be paid from such monies as the Legislature shall from time to time appropriate.

**HISTORY: Codes, 1930, §§ 7328, 7329, 7331; 1942, §§ 7486-01, 7486-02, 7486-05; Laws, 1926, ch. 339; Laws, 1930, ch. 93; Laws, 1942, ch. 322; Laws, 1948, ch. 504, §§ 1, 2, 5; Laws, 1952, ch. 314, §§ 1, 2, 5; Laws, 1956, ch. 350; Laws, 1958, ch. 342; Laws, 1960, chs. 282, 401; Laws, 1966, ch. 445, § 22; Laws, 1975, ch. 389; Laws, 1985, ch. 420; Laws, 1994, ch. 425, § 2; Laws, 1995, ch. 612, § 2; Laws, 1999, ch. 476, § 2.**

**Editor's Notes** — Laws of 1999, ch. 476, § 5, provides:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws or the Motor Vehicle Ad Valorem Tax Law of 1958 before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the highway privilege tax laws or the Motor Vehicle Ad Valorem Tax Law of 1958 are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

## § 35-1-7. General duties and powers of board.

The duties of the State Veterans Affairs Board shall be to assist former and present members of the Armed Forces of the United States, and their dependents, in securing any benefits or privileges under any federal or state law or regulation to which they are entitled and to advise the Governor and Legislature on veterans affairs. Moreover, veterans or their dependents shall be given their choice of organizations to represent them in instances where a case is appealed, and the board shall lend its full cooperation in connection therewith.

The board and its employees shall cooperate fully with all congressionally chartered veterans organizations within the state, including servicing the power of attorney of the congressionally chartered veterans organizations upon the request of the organizations to the State Veterans Affairs Board in the prosecution of all claims on behalf of veterans. However, all powers of attorney to the State Veterans Affairs Board shall be processed first, and thereafter, powers of attorney shall be processed for veterans organizations in the ratio that the membership of the organization bears to the total number of veterans residing in Mississippi.

The State Veterans Affairs Board is designated as the "state approving agency" for the State of Mississippi. It shall be the duty of the State Veterans Affairs Board to inspect, approve and supervise schools, institutions and establishments for war orphan and veteran training as provided in Section 1771, Chapter 35, Title 38, United States Code, and in any subsequent acts passed by the Congress of the United States for the purpose of education and training of war orphans or former and present members of the Armed Forces of the United States. The State Veterans Affairs Board is authorized to employ the needed personnel to perform the duties as outlined in Section 1771, Chapter 35, Title 38, United States Code, and in any subsequent acts as enacted by the Congress of the United States, and to enter into contract with the Department of Veterans Affairs for salary and travel reimbursement for personnel employed for this purpose.

The State Veterans Affairs Board shall operate all Mississippi state veterans homes when established as authorized by Sections 35-1-19 through 35-1-29.

The State Veterans Affairs Board is authorized to adopt such policies and to prescribe such rules and regulations as it may deem necessary for the proper administration of this chapter. However, such policies and regulations shall not be in conflict with any of the provisions of this chapter.

**HISTORY: Codes, 1930, § 7330; 1942, § 7486-03; Laws, 1926, ch. 339; Laws, 1942, ch. 322; Laws, 1948, ch. 504, § 3; Laws, 1952, ch. 314, § 3; Laws, 1966, ch. 534, § 1; Laws, 1980, ch. 466, § 7; Laws, 1993, ch. 426, § 1; Laws, 1994, ch. 425, § 3, eff from and after passage (approved March 16, 1994).**

**Editor's Notes —** Laws of 2011, ch. 506, § 8, provides:

"SECTION 8. The Veterans Affairs Board, in accordance with applicable rules and regulations of the State Fiscal Officer, is authorized to escalate the total number of full time and part time time-limited positions to not more that two hundred two (202) positions above the total number of time-limited positions that are authorized in House Bill No. 3047, 2011 Regular Session." The reference to "House Bill No 3047" in this section should probably be to "Senate Bill No. 3047," which was chaptered as Chapter 2.

**Cross References** — Duties and powers of state veterans affairs board with respect to Mississippi State Veterans Home, see §§ 35-1-25 through 35-1-29.

Duties of board with respect to county veteran service officers, see § 35-3-21.

War veterans memorial commission, see §§ 35-3-24, 35-3-26, 35-3-27.

**Federal Aspects**— Section 1771 of Title 38, United States Code, referred to in this section, was reclassified as 38 USCS § 3671.

## § 35-1-9. Cooperation by county welfare departments.

In addition to all other duties now or hereafter imposed by law, it shall be the duty of the county departments of public welfare, to cooperate with the state veterans affairs board, and to aid all residents of the State of Mississippi who served in the military or naval forces of the United States during any war or police action in which the armed forces of the United States have been, are, or shall be committed for action, their relatives, beneficiaries or dependents, in receiving from the United States any and all compensations, hospitalization, insurance, other aid or benefits to which they may be entitled under existing or hereafter enacted laws of the United States.

This section shall not be held to repeal any existing law relative to the duties of such county departments, but shall be supplemental and cumulative thereto.

**HISTORY: Codes, 1942, § 7486-09; Laws, 1944, ch. 294; Laws, 1948, ch. 504, § 9; Laws, 1952, ch. 314, § 6.**

**Cross References** — Creation and composition of the county departments of Human Services, see § 43-1-9.

## § 35-1-11. Repealed.

Repealed by Laws, 1980, ch. 338, eff from and after July 1, 1980.

[Codes, 1942, § 7486-04; Laws, 1948, ch. 504, § 4; Laws, 1952, ch. 314, § 4]

**Editor's Notes** — Former § 35-1-11 related to restrictions on affiliation of members of state veterans affairs board, employees of board, and service commissioners with veterans organization.

## § 35-1-13. Seal of board.

The executive director appointed by the State Veterans Affairs Board shall have a seal which shall be in the form of a circle with the image of an eagle in the center and around the margin the words: "State Veterans Affairs Board State of Mississippi," and under the image of the eagle the word: "Official."

The executive director, deputy director, division directors and state veterans service officers shall affix the seal prescribed by this section to every document where the same is required by law, and to every certificate and other official paper executed by them where necessary or proper. All documents authenticated with the seal and signed by the executive director, deputy director, a division director or a state veteran service officer shall be recognized as properly attested to in the same manner as if authenticated by notaries public, summary court officials and others authorized by law to take acknowledgments. All copies of papers, copied or certified to by the executive director, deputy director, a division director or a state veterans service officer and authenticated by the seal, shall be accepted in all matters equally in like manner as the original.

**HISTORY: Codes, 1930, § 7338; 1942, § 7486-07; Laws, 1930, ch. 6; Laws, 1934, ch. 167; Laws, 1948, ch. 504, § 7; Laws, 1994, ch. 425, § 4; Laws, 1995, ch. 612, § 3, eff from and after passage (approved April 7, 1995).**

### § 35-1-15. Notarial powers of employees.

The executive director appointed by the State Veterans Affairs Board, the deputy director, division director and state veterans service officers shall have power to administer oaths and affirmations and to take acknowledgments anywhere within the State of Mississippi under the board's seal of office and to perform all other duties required of notaries public.

**HISTORY: Codes, 1930, § 7334; 1942, § 7486-08; Laws, 1930, ch. 6; Laws, 1934, ch. 167; Laws, 1948, ch. 504, § 8; Laws, 1994, ch. 425, § 5; Laws, 1995, ch. 612, § 4, eff from and after passage (approved April 7, 1995).**

**Cross References** — Notaries public generally, see § 25-33-1 et seq.

Notarial powers of the post service officers of nationally chartered veteran organizations, see § 35-3-7.

### § 35-1-17. Office.

The Department of Finance and Administration shall furnish suitable office space for the board and its employees.

**HISTORY: Codes, 1930, § 7332; 1942, § 7486-06; Laws, 1926, ch. 339; Laws, 1948, ch. 504, § 6; Laws, 1994, ch. 425, § 6, eff from and after passage (approved March 16, 1994).**

## MISSISSIPPI STATE VETERANS HOME

| Sec. | |
|---|---|
| 35-1-19. | Establishment of Mississippi State Veterans Home; establishment of other veterans homes. |
| 35-1-21. | Governing authority; operation and maintenance; purchase of services, commodities, etc., from federal government; State Veterans Affairs Board authorized to operate and maintain state veterans homes without contracting for management purposes with any nongovernmental entity or United States Department of Veterans Affairs; board authorized to hire administrators and other personnel; State Department of Health to conduct certification survey of veterans home in Collins. |
| 35-1-23. | Acceptance and use of federal funds. |
| 35-1-25. | Determination of staffing needs; purchasing of equipment. |

| Sec. | |
|---|---|
| 35-1-27. | Standards for admissions and dismissals; rules and regulations; funds paid by state veterans homes residents for their monthly expenses at veterans homes to be considered special funds held in fiduciary capacity for their benefit. |
| 35-1-29. | Acceptance and use of gifts and donations. |
| 35-1-31. | Mississippi State Veterans' Home in Jackson designated as "The General Hilton R. 'Jack' Vance Mississippi State Veterans' Home.". |
| 35-1-32. | Mississippi State Veterans' Home in Kosciusko, Mississippi, designated as the "Brigadier General Martha Jo Leslie Mississippi State Veterans' Home. |
| 35-1-33. | Repealed. |

## § 35-1-19. Establishment of Mississippi State Veterans Home; establishment of other veterans homes.

There is hereby authorized to be established by the State Veterans Affairs Board, the Mississippi State Veterans Home on a site to be determined by the State Veterans Affairs Board, with the approval of the Bureau of Building, Grounds and Real Property Management of the Governor's Office of General Services, when funds are made available for such purpose by any agency of the federal government or other sources. The object and purpose of the establishment of the Mississippi State Veterans Home shall be to provide domiciliary care and other related services for eligible veterans of the State of Mississippi.

One or more additional veterans homes or domiciliaries are hereby authorized to be established by the State Veterans Affairs Board on sites in northern, central or southern Mississippi, to be determined by the State Veterans Affairs Board, with the approval of the Department of Finance and Administration, when funds are made available for such purpose by any agency of the federal government or other sources. The Veterans Affairs Board shall give the three (3) regions, northern, southern and central priority as to where the veterans home shall be located, with the northern region having first priority, the southern region having the next level priority and the central region being third in order of priority. The object and purpose of the establishment of such additional homes or domiciliaries shall be to provide domiciliary care and other related services for eligible veterans of the State of Mississippi. The State Veterans Affairs Board shall not be required to obtain certificates of need to carry out the intent and purpose of this section.

**HISTORY: Laws, 1980, ch. 466, § 1; Laws, 1985, ch. 307; Laws, 1993, ch. 426, § 2, eff from and after passage (approved March 22, 1993).**

**Editor's Notes —** Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

**Cross References —** State veterans affairs board generally, see § 35-1-1 et seq.

## RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans Laws §§ 53 et seq.

## § 35-1-21. Governing authority; operation and maintenance; purchase of services, commodities, etc., from federal government; State Veterans Affairs Board authorized to operate and maintain state veterans homes without contracting for management purposes with any nongovernmental entity or United States Department of Veterans Affairs; board authorized to hire administrators and other personnel; State Department of Health to conduct certification survey of veterans home in Collins.

(1) Upon the establishment of the Mississippi State Veterans Home, and any additional homes as may be established, the Mississippi State Veterans Affairs Board is hereby designated as the governing authority of any such facilities. The operation and maintenance of all veterans homes shall meet the standards of the United States Department of Veterans Affairs with regard to the operation of state veterans homes.

(2) The State Veterans Affairs Board may contract with nongovernmental entities or the United States Department of Veterans Affairs to operate and provide services to state veterans homes. The board may contract with the vendor whose proposal is most advantageous to the state and veterans, taking into consideration cost factors, program suitability factors, management plan, delivery of care and service to residents, excellence of program design, key personnel, corporate or company resources, financial condition of the vendor, corporate experience and past performance, and any other requirements deemed necessary by the board and expressed in its solicitation for proposals. Contract(s) awarded under this section may be for periods exceeding one (1) year. The board is not required to select the vendor offering the lowest cost proposal, but shall select the vendor who, in the board's discretion, offers the proposal most advantageous to the State of Mississippi and veterans. When any contract is awarded, the reason(s) for the awarding of the contract shall be entered on the minutes of the board. The provisions of this paragraph shall supersede any rule or regulation of the Public Procurement Review Board to the contrary.

(3) The State Veterans Affairs Board may, as permitted by federal laws or regulations, purchase from the United States Department of Veterans Affairs, from contracts established by the United States Department of Veterans Affairs, or through other sharing agreements between the board and the United States Department of Veterans Affairs, services, commodities, supplies and equipment for use in operation of, and provision of care to residents of, the

state veterans homes when such purchases or agreements are advantageous to the veterans and the state.

(4) The State Veterans Affairs Board may operate and maintain the state veterans homes without entering into any contract for management purposes with any nongovernmental entity or the United States Department of Veterans Affairs to operate the homes. In such instances, the State Veterans Affairs Board shall be solely responsible for the operation and maintenance of the state veterans homes and shall hire the administrators and all other personnel for the veterans homes. The mission of the State Veterans Affairs Board in managing the state veterans homes shall be to provide domiciliary care and other related services for eligible veterans in the most cost efficient manner.

(5) The State Department of Health shall perform an initial certification survey of the State Veterans Home in Collins, Mississippi, on or about July 1, 2000. The purpose of this initial survey is to provide a baseline for measuring the quality of care during the period for which this section applies. In addition to the initial certification survey, the State Department of Health shall, as appropriate and in its discretion, conduct periodic follow-up certification surveys, during the period for which this section applies, of the State Veterans Home in Collins, Mississippi.

**HISTORY: Laws, 1980, ch. 466, § 2; Laws, 1993, ch. 426, § 3; Laws, 1995, ch. 612, § 5; Laws, 1996, ch. 362, § 1; Laws, 2000, ch. 312, § 1; Laws, 2002, ch. 338, § 1, eff from and after July 1, 2002; Laws, 2019, ch. 392, § 1, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment, in (2), inserted “and provide services to” in the first sentence, and substituted “Public Procurement Review Board” for “State Personnel Board” in the last sentence.

**Cross References —** Duties and powers of state veterans affairs board, see § 35-1-7.

### OPINIONS OF THE ATTORNEY GENERAL

The State Veterans Affairs Board could assume management and operation of certain nursing homes upon termination of the current contract; however, any such operation would be required to meet the standards of the U.S. Department of Veterans Affairs. Leslie, Nov. 16, 2001, A.G. Op. #01-0695.

## § 35-1-23. Acceptance and use of federal funds.

The Mississippi State Veterans Home and additional homes authorized by Section 35-1-7 and Sections 35-1-19 through 35-1-29 are authorized to accept funds from any source whatever, including the federal government or any department or agency thereof. All such funds received by the veterans home including funds from the United States or any federal agency or program for the support of persons housed or buried on the grounds of the Mississippi State Veterans Home and additional homes shall be used by the State Veterans Affairs Board to pay maintenance, operational and administrative expenses and to further the object and purpose of the Mississippi State Veterans Home and additional homes.

**HISTORY: Laws, 1980, ch. 466, § 3; Laws, 1993, ch. 426, § 4, eff from and after passage (approved March 22, 1993).**

**Cross References —** Duties and powers of state veterans affairs board generally, see § 35-1-7.

## § 35-1-25. Determination of staffing needs; purchasing of equipment.

It shall be the duty of the Mississippi State Veterans Affairs Board to determine the need and, within available funds for such purpose, to provide adequate staffing to operate the Mississippi State Veterans Home and such additional homes as may be constructed. The board is authorized, within available funds for such purpose, to purchase such equipment as necessary to facilitate the establishment and operation of the veterans homes.

**HISTORY: Laws, 1980, ch. 466, § 4; Laws, 1993, ch. 426, § 5, eff from and after passage (approved March 22, 1993).**

**Cross References —** Duties and powers of state veterans affairs board generally, see § 35-1-7.

## § 35-1-27. Standards for admissions and dismissals; rules and regulations; funds paid by state veterans homes residents for their monthly expenses at veterans homes to be considered special funds held in fiduciary capacity for their benefit.

The Mississippi Veterans Affairs Board shall determine and set conditions and standards for admission and dismissal of all persons to and from the Mississippi State Veterans Home and such additional homes as may be constructed. In addition, the board shall promulgate such rules and regulations as it deems necessary for the government of the Mississippi State Veterans Home and such additional homes as may be constructed. Such rules and regulations shall include the establishment of rates for patient care within the patient's ability to pay. All funds paid to the board by the veteran residents of state veterans homes to fund their monthly expenses at the state veterans homes shall be considered to be special funds held in a fiduciary capacity for the benefit of the residents of the state veterans homes.

**HISTORY: Laws, 1980, ch. 466, § 5; Laws, 1993, ch. 426, § 6; Laws, 2008, ch. 361, § 2; Laws, 2011, ch. 506, § 7, eff from and after passage (approved Apr. 26, 2011).**

**Cross References —** Duties and powers of state veterans affairs board generally, see § 35-1-7.

## § 35-1-29. Acceptance and use of gifts and donations.

The Mississippi State Veterans Affairs Board is empowered to receive and accept gifts or donations, or both, for the benefit of the Mississippi State Veterans Home and such additional homes as may be constructed, and the same shall be used for carrying out the object and purpose of the veterans homes.

**HISTORY: Laws, 1980, ch. 466, § 6; Laws, 1993, ch. 426, § 7, eff from and after passage (approved March 22, 1993).**

**Cross References** — Duties and powers of state veterans affairs board generally, see § 35-1-7.

## § 35-1-31. Mississippi State Veterans' Home in Jackson designated as "The General Hilton R. 'Jack' Vance Mississippi State Veterans' Home."

The Mississippi State Veterans' Home located in Jackson, Mississippi, shall be renamed the General Hilton R. "Jack" Vance Mississippi State Veterans' Home. The State Veterans' Affairs Board shall prepare a distinctive plaque, to be placed in a prominent place within the General Hilton R. "Jack" Vance Mississippi State Veterans' Home, which states the background, accomplishments and service to the state of General Hilton R. "Jack" Vance.

**HISTORY: Laws, 2005, ch. 319, § 1, eff from and after passage (approved Mar. 14, 2005).**

**Cross References** — Duties and powers of state veterans affairs board generally, see § 35-1-7.

## § 35-1-32. Mississippi State Veterans' Home in Kosciusko, Mississippi, designated as the "Brigadier General Martha Jo Leslie Mississippi State Veterans' Home.

The Mississippi State Veterans' Home located in Kosciusko, Mississippi, shall be renamed the "Brigadier General Martha Jo Leslie Mississippi State Veterans' Home." The State Veterans' Affairs Board shall prepare a distinctive plaque, to be placed in a prominent place within the Brigadier General Martha Jo Leslie Mississippi State Veterans' Home, which states the background, accomplishments and service to the state of Brigadier General Martha Jo Leslie.

**HISTORY: Laws, 2013, ch. 392, § 1, eff from and after passage (approved Mar. 20, 2013).**

## § 35-1-33. Repealed.

Repealed by Laws of 2010, ch. 306, § 1, effective from and after passage, (approved February 24, 2010.)

§ 35-1-33. [Laws, 2008, ch. 361, § 1, eff from and after passage (approved Mar. 31, 2008.)]

**Editor's Notes —** Former § 35-1-33 established the amount of contribution required to be paid by veteran residents of state veterans homes.

## MISSISSIPPI VETERANS MEMORIAL CEMETERY

Sec.
35-1-41. Establishment, operation and maintenance of the Mississippi Veterans Memorial Cemetery; authorization to establish additional veterans cemeteries; eligibility for burial; administration; applications for burial; receipt of federal aid; Mississippi Veterans Cemetery Fund.
35-1-43. Establishment, operation and maintenance of Mississippi Persian Gulf War Memorial; purpose of memorial; Mississippi Persian Gulf War Memorial Fund.

### § 35-1-41. Establishment, operation and maintenance of the Mississippi Veterans Memorial Cemetery; authorization to establish additional veterans cemeteries; eligibility for burial; administration; applications for burial; receipt of federal aid; Mississippi Veterans Cemetery Fund.

(1)(a) The State Veterans Affairs Board is authorized to establish, operate and maintain a Mississippi veterans cemetery in this state, which shall be known as the "Mississippi Veterans Memorial Cemetery."

(b) The State Veterans Affairs Board is authorized to establish, operate and maintain additional veterans cemeteries in this state.

(2) The State Veterans Affairs Board has the primary responsibility for verifying eligibility for interment in the veterans cemeteries. Eligibility criteria for interment in the cemeteries is the same as required for interment in a national cemetery as provided by federal law and rules and regulations applicable thereto.

(3) The cemeteries shall be under the control and administration of the State Veterans Affairs Board.

(4) Applications for interment in the cemeteries shall be processed in accordance with rules and regulations promulgated by the State Veterans Affairs Board.

(5) The State Veterans Affairs Board is designated as the agency of this state to receive federal aid under Title 38 USCS, as amended, and is authorized to receive funds from the United States Department of Veterans Affairs or any other agency of the United States authorized to grant or expend funds to assist a state in establishing, operating and maintaining veterans cemeteries. The board is authorized to receive gifts, contributions, bequests and individual reimbursements from any source, the receipt of which shall not exclude any other source of revenue. All funds received by the board pursuant to this subsection shall be deposited into a special fund, hereby created and

known as the "Mississippi Veterans Cemetery Fund," and shall be expended to establish, operate and maintain veterans cemeteries in this state. The State Veterans Affairs Board is authorized to employ such personnel as it may deem necessary to carry out its duties and responsibilities under this section.

**HISTORY: Laws, 2004, ch. 545, § 10; Laws, 2008, ch. 335, § 1; Laws, 2012, ch. 401, § 1, eff from and after July 1, 2012.**

**Editor's Notes —** Laws of 2007, ch. 396, § 1 provides:

"SECTION 1. The Department of Wildlife, Fisheries and Parks, upon consultation with the Department of Finance and Administration, may transfer to the Mississippi State Veterans Affairs Board certain real property in Winston County, Mississippi, for the purpose of establishing a state military cemetery, subject to the property meeting certain conditions of the United States Department of Veterans Affairs necessary for designating property as a state or national cemetery site."

Laws of 2010, ch. 356, § 1 provides:

"SECTION 1. (1) The Department of Finance and Administration, acting on behalf of the Board of Trustees of State Institutions of Higher Learning, may transfer to the State Veterans Affairs Board certain state-owned real property located at the Mississippi State University Coastal Plains Experiment Station in Newton County, Mississippi, such property being more specifically described as follows:

"Commence at an iron pin marking the Southwest corner of the SW ¼ of SW ¼ of Section 21, Township 6 North, Range 12 East, Newton County, Mississippi;

"Thence run North for a distance of 95.95 feet to a ½″ round iron pin;

"Thence run East for a distance of 184.22 feet to a ½″ round iron pin; Said point being the Point of Beginning of the herein described parcel of land;

"Thence run South 85 degrees 23 minutes 59 seconds East for a distance of 302.28 feet to a ½″ round iron pin;

"Thence run South 56 degrees 40 minutes 42 seconds East for a distance of 385.15 feet to a ½″ round iron pin;

"Thence run South 37 degrees 53 minutes 48 seconds West for a distance of 200.11 feet to a ½″ round iron pin;

"Thence run South 13 degrees 50 minutes 47 seconds West for a distance of 790.43 feet to a ½″ round iron pin on the north right-of-way line of Mississippi Highway No. 80;

"Thence run North 76 degrees 00 minutes 58 seconds West along said north right-of-way line of Highway 80 a distance of 472.38 feet to a ½″ round iron pin;

"Thence run North 16 degrees 31 minutes 02 seconds East for a distance of 499.06 feet to a ½″ round iron pin;

"Thence run North 00 degrees 32 minutes 52 seconds East for a distance of 568.60 feet to back to the Point of Beginning; Said parcel of land is part of the SW ¼ of SW ¼ of Section 21, Township 6 North, Range 12 East and part of the NW ¼ of NW ¼ of Section 28, Township 6 North, Range 12 East, Newton County, Mississippi, and contains 12.172 acres more or less.

"(2) The real property described in subsection (1) shall be used by the State Veterans Affairs Board as an addition to the Mississippi Veterans Memorial Cemetery, on the grounds of which the board may construct and maintain a Mississippi Persian Gulf War Memorial."

Laws of 2013, ch. 320, s. 1, provides:

"SECTION 1. (1) The Department of Wildlife, Fisheries and Parks, upon consultation with the Department of Finance and Administration, may transfer certain real property in Leflore County, Mississippi, to the State Veterans Affairs Board.

"(2) The real property transferred in subsection (1) shall be used by the State Veterans Affairs Board to establish a state veterans cemetery. The real property shall meet the United States Department of Veterans Affairs' conditions for designating the property as a state or national cemetery site."

**Cross References** — Duties and powers of state veterans affairs board generally, see § 35-1-7.

## § 35-1-43. Establishment, operation and maintenance of Mississippi Persian Gulf War Memorial; purpose of memorial; Mississippi Persian Gulf War Memorial Fund.

(1) The State Veterans Affairs Board may establish, operate and maintain a Mississippi Persian Gulf War Memorial on the grounds of the Mississippi Veterans Memorial Cemetery in Newton County, Mississippi. The purpose of the memorial is to honor and commemorate the sacrifices and service of United States Armed Forces personnel from Mississippi who have served or will serve in the Persian Gulf War between August 2, 1990, and the date on which the conflict is declared to be over, as established by law or presidential proclamation.

(2) The State Veterans Affairs Board is designated the agency of this state to receive any aid or funds from any source for the purpose of establishing, operating and maintaining the Persian Gulf War Memorial. The board may receive gifts, contributions, bequests and individual reimbursements from any source, the receipt of which shall not exclude any other source of revenue.

(3) There is created in the State Treasury a special fund to be known as the "Mississippi Persian Gulf War Memorial Fund." All funds received by the board under subsection (2) must be deposited into the special fund and expended by the board to establish, operate and maintain the Mississippi Persian Gulf War Memorial.

**HISTORY: Laws, 2010, ch. 356, § 2, eff from and after passage (approved Mar. 15, 2010).**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the name of the war memorial at the end of (3), as it was enacted by Section 2 of Chapter 356, Laws of 2010, by substituting "Mississippi Persian Gulf War Memorial' for "Mississippi Iraq Afghanistan War Memorial." The Joint Committee ratified the correction at its July 13, 2011, meeting.

**Editor's Notes** — Laws of 2010, ch. 356, § 1 provides:

"SECTION 1. (1) The Department of Finance and Administration, acting on behalf of the Board of Trustees of State Institutions of Higher Learning, may transfer to the State Veterans Affairs Board certain state-owned real property located at the Mississippi State University Coastal Plains Experiment Station in Newton County, Mississippi, such property being more specifically described as follows:

"Commence at an iron pin marking the Southwest corner of the SW ¼ of SW ¼ of Section 21, Township 6 North, Range 12 East, Newton County, Mississippi;

"Thence run North for a distance of 95.95 feet to a ½″ round iron pin;

"Thence run East for a distance of 184.22 feet to a ½″ round iron pin; Said point being the Point of Beginning of the herein described parcel of land;

"Thence run South 85 degrees 23 minutes 59 seconds East for a distance of 302.28 feet to a ½″ round iron pin;

"Thence run South 56 degrees 40 minutes 42 seconds East for a distance of 385.15 feet to a ½″ round iron pin;

"Thence run South 37 degrees 53 minutes 48 seconds West for a distance of 200.11

feet to a ½″ round iron pin;

"Thence run South 13 degrees 50 minutes 47 seconds West for a distance of 790.43 feet to a ½″ round iron pin on the north right-of-way line of Mississippi Highway No. 80;

"Thence run North 76 degrees 00 minutes 58 seconds West along said north right-of-way line of Highway 80 a distance of 472.38 feet to a ½″ round iron pin;

"Thence run North 16 degrees 31 minutes 02 seconds East for a distance of 499.06 feet to a ½″ round iron pin;

"Thence run North 00 degrees 32 minutes 52 seconds East for a distance of 568.60 feet to back to the Point of Beginning; Said parcel of land is part of the SW ¼ of SW ¼ of Section 21, Township 6 North, Range 12 East and part of the NW ¼ of NW ¼ of Section 28, Township 6 North, Range 12 East, Newton County, Mississippi, and contains 12.172 acres more or less.

"(2) The real property described in subsection (1) shall be used by the State Veterans Affairs Board as an addition to the Mississippi Veterans Memorial Cemetery, on the grounds of which the board may construct and maintain a Mississippi Persian Gulf War Memorial."

**Cross References —** Authority for establishment of Mississippi Persian Gulf War Memorial, see § 35-1-43.

# CHAPTER 3.

# WAR VETERANS; MISCELLANEOUS PROVISIONS

Sec.

35-3-1. Donation of land by municipality or county for veterans hospital, soldiers home, etc.
35-3-3. Acquisition of land by municipality or county for veterans hospital, soldiers home, etc.; issuance of bonds or notes.
35-3-5. Furnishing of quarters for veterans' organizations; issuance of bonds or notes.
35-3-7. Performance of functions of notaries public by post service officers.
35-3-9. Furnishing of free copies of birth and death certificates.
35-3-11. Furnishing of free copies of records of chancery and circuit courts.
35-3-13. Recordation without cost of honorable discharges and service certificates.
35-3-15. Acquisition of surplus federal or other property for use in training returned veterans.
35-3-17. Governor to designate educational institutions for education of returned veterans under G. I. bill of rights.
35-3-19. Investments and loans by financial institutions.
35-3-21. County veteran service offices and officers.
35-3-23. Repealed.
35-3-24. War veterans memorial commission; membership; appointment; term of office; filling of vacancies; legislators and state personnel ineligible.
35-3-25. Repealed.
35-3-26. Organization of war veterans memorial commission; officers; records; meetings; quorum; members not compensated.
35-3-27. Duties of war veterans memorial commission.
35-3-29. Use or display of name or image of member of armed forces killed in active duty; permission of family required.

## § 35-3-1. Donation of land by municipality or county for veterans hospital, soldiers home, etc.

Any municipality or county in the State of Mississippi now owning or hereafter acquiring any land for public purposes may convey and grant said land to the United States of America, its successors or assigns, or to the State of Mississippi, upon and for any consideration deemed sufficient by the mayor and councilmen or aldermen of such municipality or the supervisors of a county when the purposes of the United States of America or the State of Mississippi in acquiring the land is to use same as a site for a veterans hospital or soldiers home or any other purpose connected with the care and attention of the veterans of the various wars of the United States.

**HISTORY: Codes, 1942, § 7512; Laws, 1931, ch. 9; Laws, 1993, ch. 426, § 8, eff from and after passage (approved March 22, 1993).**

**Cross References —** General grant of powers to municipalities, see § 21-17-1.
Veterans' preference in appointments by the state personnel board, see §§ 25-9-301 through 25-9-305.

## RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 59 et seq.

## § 35-3-3. Acquisition of land by municipality or county for veterans hospital, soldiers home, etc.; issuance of bonds or notes.

Any municipality or county in the State of Mississippi, within the confines of which or adjacent thereto, there has been built or authorized to be built by the government of the United States of America or the State of Mississippi, any veterans hospital, or veterans or soldiers home, is hereby authorized, within the discretion of the mayor and board of councilmen of such municipality or board of supervisors of a county, to appropriate from any funds on hand a sufficient amount with which to purchase lands or construct buildings and other improvements needed by the government of the United States of America or the State of Mississippi in the operation of any such hospital or soldiers or veterans home. If it be necessary for the lands needed by the United States of America or the State of Mississippi to be condemned by the United States of America or the State of Mississippi, under a declaration of taking, then any such municipality or county, in the discretion of the mayor and board of councilmen of such municipality or board of supervisors of a county, shall be authorized to pay into the register of any court in which said proceedings are pending such amount as may be designated by the United States of America or the State of Mississippi in its petition or declaration of taking, in which event said moneys shall become the property of the owners of said land after due legal process is had. Such municipality or county shall be responsible for any further or additional amounts adjudged in any such proceedings against the United States of America or the State of Mississippi, including all costs of the proceedings.

The purpose for which the above appropriation is authorized is hereby declared a public purpose, for the welfare of citizens of this state, to wit, veterans of all of the wars of the United States of America.

For the purpose of securing funds to carry out the purposes of this chapter, the governing authorities of such municipality, town or county are hereby authorized and empowered, in their discretion, to issue bonds or negotiable notes for the purpose of acquiring by purchase, gift or lease real estate for the purpose herein authorized. Such bonds or notes shall be issued in an amount not to exceed the limitation now or hereafter imposed by law on municipalities or towns or counties, and shall be issued in all respects including interest rate, maturities and other details as is now or may hereafter be provided by general law regulating the issuance of bonds or notes by the corporate authorities of such municipality or town, and the board of supervisors of such county.

**HISTORY: Codes, 1942, § 7513; Laws, 1932, ch. 233; Laws, 1993, ch. 426, § 9, eff from and after passage (approved March 22, 1993).**

**Cross References —** General grant of powers to municipalities, see § 21-17-1.

### RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 59 et seq.

## § 35-3-5. Furnishing of quarters for veterans' organizations; issuance of bonds or notes.

(1) The governing authorities of any municipality, town or county in the state may, in its discretion, rent, lease, purchase or construct a building or buildings to house the units of the various congressionally chartered veteran's organizations and the auxiliaries of such organizations, and the records of such organizations and their auxiliaries, and may, where necessary, acquire land by purchase, lease or otherwise for the purpose of constructing such building or buildings.

(2) The expenses authorized by subsection (1) of this section may be paid by such municipality, town or county out of any available funds.

(3) For the purpose of securing funds to carry out subsection (1) of this section, the governing authorities of such municipality, town or county are hereby authorized and empowered in their discretion to issue bonds or negotiable notes for the purpose of acquiring by purchase, gift or lease real estate for the purposes herein authorized, and also for owning, erecting, building, establishing, and maintaining such buildings herein authorized, and to remodel or repair any such building. Such bonds or notes shall be issued in an amount not to exceed the limitation now or hereafter imposed by law on municipalities or counties or towns, and shall be issued in all respects including interest rate, maturities and other details as is now or may hereafter be provided by general law regulating the issuance of bond or notes by the corporate authorities of such municipality or town, and the board of supervisors of such county.

**HISTORY: Codes, 1942, § 7513-01; Laws, 1944, ch. 177, §§ 1-3, eff June 30, 1944.**

### RESEARCH REFERENCES

**ALR.**
Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

## § 35-3-7. Performance of functions of notaries public by post service officers.

Each of the several post service officers of the nationally chartered veteran organizations in the State of Mississippi shall have power to administer oaths and affirmations and to take acknowledgments anywhere in the State of Mississippi under the official seal of office of any such post, and to perform all other duties required of notaries public in connection with matters affecting the veterans of all wars, their heirs and dependents, in claims against the United States government, but for no other purpose. There shall be no charge for the performance of this service. No bond shall be required and the commission shall be issued by the secretary of state and the governor without charge.

Such post service officers shall affix the official seal of their respective posts to each document where the same is required by law, and to each certificate and other official paper executed by them where necessary or proper. All documents authenticated with said seal and signed by any such post service officer shall be recognized as properly attested to in the same manner as if authenticated by notaries public or others authorized by law to take acknowledgments. All copies of papers certified to by any such post service officer and authenticated by said seal shall be accepted in all matters equally in like manner as the original. The official seal of each post shall contain therein the name of the nationally chartered veteran organization. The name and number of the post and the commission of each post service officer shall be approved by the board of supervisors in the county where he resides, and enrolled upon the minutes of said board of supervisors before said post service officer shall be qualified to act.

Any post service officer who shall abuse the privilege granted by this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not to exceed One Hundred Dollars ($100.00) or imprisoned in the county jail not to exceed thirty days, or be both so fined and imprisoned. In addition thereto he shall be removed from office.

**HISTORY: Codes, 1942, § 7514; Laws, 1932, ch. 309; Laws, 1948, ch. 506.**

**Cross References** — Exception of notaries from the prohibition against office holders under any foreign government or the United States government holding any state office, see Miss. Const. Art. 14, § 266.

Notaries public generally, see § 25-33-1 et seq.

Notarial powers of the state veterans affairs commissioner and the assistant commissioners, see § 35-1-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 35-3-9. Furnishing of free copies of birth and death certificates.

When requested by the veterans administration, state veterans affairs board, any holder of a power of attorney from a veteran or his claimant, or any recognized veteran service officer, the bureau of vital statistics of the State of Mississippi shall furnish to such organizations or officers, without charge, copies of birth and death certificates when the same are needed to establish claims for dependency, disability or survivors' benefits for any veterans who are legal residents of the State of Mississippi, or their claimants.

**HISTORY: Codes, 1942, § 7515; Laws, 1932, ch. 128; Laws, 1954, ch. 316.**

**Cross References** — Additional fee for each original and each copy of a birth certificate to be deposited into the Mississippi Children's Trust Fund, see § 41-57-11.

## § 35-3-11. Furnishing of free copies of records of chancery and circuit courts.

When requested by the veterans administration, state veteran affairs board, any holder of a power of attorney from a veteran or his claimant, or any recognized veterans service officer, the chancery clerks and circuit clerks of all counties of the State of Mississippi shall, upon application by such organizations or officers, furnish, without charge, certified copies of marriage licenses, divorce decrees, adoption decrees, and any and all other records when the same are needed to establish claims for dependency, disability or survivors' benefits for any veterans who are legal residents of the State of Mississippi, or their claimants.

**HISTORY: Codes, 1942, § 7515.5; Laws, 1954, ch. 315.**

## § 35-3-13. Recordation without cost of honorable discharges and service certificates.

All chancery clerks, of all counties of the State of Mississippi, shall record, without any cost whatsoever to any person of the Armed Forces of the United States residing in the same county as the chancery clerk, all honorable discharges and all certificates of service of any and all members of the Armed Forces of the United States of America who have served in the Armed Forces of the United States, including the army, navy and marine, coast guard and nurses corps.

The board of supervisors of all counties shall furnish to the chancery clerk all necessary supplies and equipment for the recording of these instruments, and allow out of the general fund of the county the sum of One Dollar ($1.00) for recording the discharge certificate. All certified copies will be furnished free without cost either to the soldier, sailor, marine, coast guardsman, nurse or the county.

The chancery clerk of all counties shall keep a record of all honorable discharges and certificates of discharge in a separate record safeguarded and protected from theft, and definitely marked "Record of Discharged Members of the Armed Forces." The chancery clerk shall furnish certified copies of the discharge or discharge certificate of any veteran when so requested by the veteran, his dependents or his authorized representative; however, before furnishing any copy of the discharge or discharge certificate, the chancery clerk must verify the identity and relationship to the veteran of the person requesting the copy and must obtain and maintain on file a signed consent for the release of information from the veteran, dependent or authorized representative.

**HISTORY: Codes, 1942, § 7516; Laws, 1942, ch. 191; Laws, 1944, ch. 164, § 1; Laws, 1994, ch. 521, § 38; Laws, 2002, ch. 609, § 2, eff from and after July 1, 2002.**

**Cross References** — Restoration of right of suffrage to honorably discharged veterans who had previously been convicted of crime, see § 99-19-37.

## OPINIONS OF THE ATTORNEY GENERAL

Records of the chancery clerk are public records unless specifically exempt by statute or subject to non disclosure by an appropriate court order and, therefore, soldier's and sailor's discharge records may not be subject to restricted access by way of adoption a county ordinance. Shepard, May 24, 2002, A.G. Op. #02-0265.

## RESEARCH REFERENCES

**ALR.**

Admissibility and effect of evidence or comment on party's military service or lack thereof. 9 A.L.R.2d 606.

Judicial review of military action with respect to type of discharge given member of Armed Forces. 92 A.L.R. Fed. 333.

## § 35-3-15. Acquisition of surplus federal or other property for use in training returned veterans.

The governor of the State of Mississippi is hereby authorized to execute contracts with the United States of America, or any proper federal agency, for the purpose of obtaining for the State of Mississippi any and all kinds of surplus government property to be used by the various educational institutions of the State of Mississippi for the purpose of training returned veterans of the armed services under the G.I. bill of rights.

The governor of the State of Mississippi is hereby authorized to accept in the name of the State of Mississippi any and all property of every kind, character and description which may be used by the proper educational institutions of the State of Mississippi for the purpose of training returned veterans of the armed services of the United States, particularly under the G.I. bill of rights as passed by the national congress.

**HISTORY: Codes, 1942, § 7516.3-02; Laws, 1946, ch. 206, §§ 1, 2.**

**Federal Aspects—** G.I. bill of rights; basic educational assistance, see 38 USCS §§ 3011 et seq.

## § 35-3-17. Governor to designate educational institutions for education of returned veterans under G. I. bill of rights.

Whenever the governor of the State of Mississippi has received and executed necessary contracts with the United States of America, or any agency thereof, turning over to the State of Mississippi any facilities of the United States, or any agency thereof, to be used for training, developing or educating returned veterans under the G.I. bill of rights, the governor shall then designate the institution of higher learning, or public junior college, or other qualified educational institution to take charge of, control and manage the same for such purposes.

Any such institution of higher learning, or public junior college, or other qualified educational institution so designated by the governor, is hereby authorized and empowered to accept the facilities and to control, care for and manage the same.

**HISTORY: Codes, 1942, § 7516.3-01; Laws, 1946, ch. 249, §§ 1, 2.**

**Federal Aspects—** G.I. bill of rights; basic educational assistance, see 38 USCS §§ 3011 et seq.

**RESEARCH REFERENCES**

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 124 et seq.

## § 35-3-19. Investments and loans by financial institutions.

Any bank, savings bank, trust company, insurance company, building and loan association or credit union is hereby authorized to invest its funds and monies, eligible for investment, in notes, bonds or other obligations secured by mortgage, deed of trust, or other lien on real property, title to which is fee simple or leasehold, or on personal property, in which except as to value of the property securing the lien, the priority of the lien thereon securing the obligation and the maturity thereof, and the quality of the title thereto, it is otherwise lawful for such investor to invest its funds, if the entire amount of the indebtedness is insured or guaranteed by the United States, or, if not so wholly insured or guaranteed, the difference between the entire amount of such indebtedness and that portion thereof which is insured or guaranteed by the United States does not exceed the amount permissible under the applicable law of this state, and meets the requirements thereof as to value of property and priority of lien. Any such lender except an insurance company may make an unsecured loan not exceeding $1,000.00 to an eligible veteran if at least one-half thereof is guaranteed pursuant to the Servicemen's Readjustment Act of 1944, as amended by the act of Congress approved December 28, 1945, being Chapter 588 of the first session of the 79th Congress.

**HISTORY: Codes, 1942, § 7516.5-01; Laws, 1946, ch. 360, § 1.**

**Cross References —** Authority to make loans or advances insured by federal government, see § 43-33-301.

Powers in regard to trust, see § 81-5-33.

Securities in which associations may invest, see §§ 81-12-155 through 81-12-165.

Loans by credit unions generally, see § 81-13-43.

**Federal Aspects—** Housing and small business loans for veterans, see 38 USCS §§ 3701 et seq.

## § 35-3-21. County veteran service offices and officers.

In order to maintain offices and pay personnel for the purpose of assisting all residents of the State of Mississippi who served in the military or naval forces of the United States during any war, their relatives, beneficiaries or dependents, to receive from the United States any and all compensation, hospitalization, insurance or other aid or benefits to which they may be entitled under existing or hereafter enacted laws of the United States, the boards of supervisors in the various counties in the state are hereby authorized and empowered, in their discretion, to expend out of the general county fund, or special veterans' fund herein authorized to be set up, or from both of such funds, such monies necessary to defray the office operating expenses and salary of the county veteran service officers.

Two (2) or more counties may, upon resolution duly adopted by the board of supervisors of each of such counties, agree to establish one (1) veteran service office for all of such counties. When two (2) or more counties enter into such an agreement, each county shall pay such amount mutually agreed upon and duly adopted by resolution of the respective boards of supervisors.

County veteran service officers shall be (a) honorably discharged or honorably released veterans of any war or police action in which the Armed Forces of the United States have been, are or shall be committed for action; (b) the surviving spouse or child of any such deceased veteran; or (c) any person employed as a county veteran service officer in any county of this state on March 30, 1990. From and after July 1, 1990, county veteran service officers shall be certified by the Mississippi State Veterans' Affairs Board which, among any other criteria it may establish, shall require such officers to (a) attend at least one (1) of the two (2) annual training programs provided for such officers and (b) successfully complete a written examination each year on the duties and responsibilities of and assistance available to such officers and veterans. The programs shall be developed by the State Veterans' Affairs Board. The program shall include a period of instruction which shall be not more than three (3) days for veteran service officers receiving initial certification, and not more than two (2) days for veteran service officers being recertified. County veteran service officers who annually receive and complete such instruction in a manner satisfactory to the Veterans' Affairs Board and in accordance with this section shall be certified by the board. No county veteran service officer shall be entitled to receive any compensation for his services, to which he is otherwise entitled by law, unless he is annually certified by the board.

County veteran service officers may be employed, in the discretion of the boards of supervisors, either full time or part time.

The boards of supervisors of the various counties are further authorized and empowered to pay all necessary and actual expenses of county veteran service officers who attend a school of instruction within the State of Mississippi for such county veteran service officers.

It shall also be the duty of the boards of supervisors to aid the United States to defeat all unjust claims for aid or benefit therefrom.

Such expenditures may be made by the several counties acting alone, or in cooperation with other counties, and in cooperation with any federal or state agency carrying out such purposes.

In the event that the general revenues of the county levied under and within the limits of existing taxing statutes are not sufficient to pay the expenses authorized herein, the board of supervisors may, in its discretion, levy an additional tax not to exceed one (1) mill on all taxable property in the county to defray such expenses or any part thereof. Any tax levy made under authority of this chapter shall not be considered in refunding homestead exemption losses under Title 27, Chapter 33, Mississippi Code of 1972.

**HISTORY: Codes, 1942, § 7519.7; Laws, 1946, ch. 221, § 6; Laws, 1948, ch. 500, § 6; Laws, 1950, ch. 465, § 6; Laws, 1966, ch. 536, § 1; Laws, 1968, ch. 480, § 1; Laws, 1976, ch. 444; Laws, 1977, ch. 358; Laws, 1980, ch. 472; Laws, 1983, ch. 399; Laws, 1990, ch. 504, § 1; Laws, 1991, ch. 342 § 1; Laws, 1996, ch. 399, § 1, eff from and after passage (approved March 19, 1996); Laws, 2018, ch. 313, § 1, eff from and after July 1, 2018.**

**Amendment Notes —** The 2018 amendment deleted "but may not hold any other elective or appointive position. However, this paragraph shall not apply to county veteran service officers who may be serving in such capacity before March 31, 1990" from the end of the fourth paragraph.

**Cross References —** Mississippi State Veteran Affairs Board, see § 35-1-1 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Authority of board of supervisors.

**1. In general.**

An employee's positions of veteran service clerk and inventory control clerk for the county, and his position as a member of the city council, were not held in violation of the separation of powers provision of the Mississippi Constitution, in that his positions with the county were ministerial and did not require that he exercise executive or judicial powers. Ball v. Fitzpatrick, 602 So. 2d 873, 1992 Miss. LEXIS 397 (Miss. 1992).

**2. Authority of board of supervisors.**

Under this section, the authority of a county board of supervisors to select and hire a veterans affairs coordinator is by necessity implied from the express authority granted to pay personnel and provide offices for such personnel for the purpose of assisting veterans and their families in securing benefits to which they are entitled under federal law. Blakeney v. Sims, 349 So. 2d 538, 1977 Miss. LEXIS 2161 (Miss. 1977).

## OPINIONS OF THE ATTORNEY GENERAL

There being no "grandfather" clause, all incumbents holding position of county veteran service officer must meet qualifications established by legislature in Chapter 504, Laws of 1990; hence, county veteran service officer must be either honorably discharged veteran or surviving spouse of deceased veteran. Stone, Sept. 6, 1990, A.G. Op. #90-0660.

There is no provision or authority allowing for retroactively compensating individual for pre-certification service. Richardson Nov. 19, 1993, A.G. Op. #93-0722.

While the statute clearly prohibits a veteran service officer from holding an elective office, there is no provision for automatic vacation of the position upon the election of the incumbent to another position. Griffin, April 7, 2000, A.G. Op. #2000-0165.

## § 35-3-23. Repealed.

Repealed by Laws, 1982, § 5, eff from and after July 1, 1982.

[Codes, 1942, § 6189-31; Laws, 1968, ch. 479, § 1; Laws, 1978, ch. 484, § 50]

**Editor's Notes** — Former § 35-3-23 transferred the duties and responsibilities of the original war veterans memorial commission to the Mississippi Commission on Natural Resources, acting through the bureau of recreation and parks of the Mississippi Department of Natural Resources.

## § 35-3-24. War veterans memorial commission; membership; appointment; term of office; filling of vacancies; legislators and state personnel ineligible.

There is hereby created a war veterans memorial commission, which is hereby charged with the duty of carrying out the provisions as hereinafter set forth, and it shall be referred to in the succeeding sections hereof as the "commission." The commission shall consist of seven (7) commissioners, one (1) member each from the American Legion, the Veterans of Foreign Wars, Disabled American Veterans, American Ex-Prisoners, of War, Veterans of World War I, Sons of Confederate Veterans, and the Mississippi National Guard. The commissioners shall be appointed by the governor on the recommendation of the state executive governing body of each respective organization entitled to a member of the commission. The initial terms of the members shall be as follows, to be designated by the governor at the time of appointment: (a) two (2) members shall be appointed for terms of two (2) years each; (b) two (2) members for terms of four (4) years each; (c) two (2) members for terms of six (6) years each; and (d) the member from the American Ex-Prisoners of War for a term of four (4) years. Thereafter, each term shall be for six (6) years or until a successor in office has been appointed and qualified. In the event of any vacancy on the commission, the governor shall, within thirty (30) days, designate a successor in the same manner as the original appointment was made. No member of either branch of the legislature nor any state officer or employee shall serve on the commission.

**HISTORY: Laws, 1982, ch. 312, § 1; Laws, 1983, ch. 307, eff from and after passage (approved February 22, 1983).**

**Editor's Notes** — Laws of 1982, ch. 312, § 4, effective July 1, 1982, provides as follows:

"SECTION 4. It is the intent of the Legislature to transfer the duties and responsibilities relating to the operation of the War Veterans Memorial Building presently vested in the Bureau of Recreation and Parks of the Mississippi Department of Natural Resources to the War Veterans Memorial Commission created herein."

## § 35-3-25. Repealed.

Repealed by Laws, 1978, ch. 484, § 51, eff from and after July 1, 1979.

[Codes, 1942, § 6189-32; Laws, 1968, ch. 479, § 2]

**Editor's Notes —** Former § 35-3-25 provided for officers, records, and meetings of the original war veterans memorial commission.

For present similar provisions, see § 35-3-26.

## § 35-3-26. Organization of war veterans memorial commission; officers; records; meetings; quorum; members not compensated.

Within thirty (30) days after appointment of the commissioners, an organizational meeting of the commission shall be held at the War Veterans Memorial Building at which there shall be elected a chairman, vice-chairman and secretary to serve during the terms of office of the commissioners. Minutes of the meetings of the commission shall be kept in a well-bound book and, along with all other records and papers, shall remain in the custody of the secretary of the commission. The commission shall fix a regular meeting time and place. A majority of the commission shall constitute a quorum for the transaction of business, but less than a quorum shall have the power to adjourn the commission from time to time until a quorum shall be present. All actions taken or rules and regulations adopted by the commission shall be by resolution duly spread upon its minutes, showing yea and nay votes of each commissioner present. The signature of the chairman and secretary, pursuant to a duly adopted resolution, shall be binding upon the commission.

The members of the war veterans memorial commission shall receive neither salary, per diem nor expenses.

**HISTORY: Laws, 1982, ch. 312, § 2, eff from and after July 1, 1982.**

**Editor's Notes —** Laws of 1982, ch. 312, § 4, effective July 1, 1982, provides as follows:

"SECTION 4. It is the intent of the Legislature to transfer the duties and responsibilities relating to the operation of the War Veterans Memorial Building presently vested in the Bureau of Recreation and Parks of the Mississippi Department of Natural Resources to the War Veterans Memorial Commission created herein."

## § 35-3-27. Duties of war veterans memorial commission.

The duties of the commission shall be as follows:

(a) To recommend to the capitol commission the allocation of office space in the War Veterans Memorial Building;

(b) To promote the observation of Armistice Day in all the public schools in the State of Mississippi by appropriate exercises;

(c) To plan and conduct at the War Veterans Memorial Building and other appropriate places in the State of Mississippi ceremonies honoring the war dead of the State of Mississippi on Armistice Day and on other anniversary days designated by the commission;

(d) To supervise the maintenance and preservation of Mississippi's acre in the Honor Grove of Freedom's Foundation at Valley Forge; and

(e) To operate the Mississippi Military Museum located in the War Memorial Building.

**HISTORY: Codes, 1942, § 6189-33; Laws, 1968, ch. 479, § 3; Laws, 1982, ch. 312, § 3, eff from and after July 1, 1982.**

**Editor's Notes** — Laws of 1982, ch. 312, § 4, effective July 1, 1982, provides as follows:

"SECTION 4. It is the intent of the Legislative to transfer the duties and responsibilities relating to the operation of the War Veterans Memorial Building presently vested in the Bureau of Recreation and Parks of the Mississippi Department of Natural Resources to the War Veterans Memorial Commission created herein."

Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 29-5-1 provides that wherever the term "capitol commission" appears in the laws of the state of Mississippi, it shall be construed to mean the bureau of capitol facilities of the office of general services.

**Cross References** — Duties and responsibilities of the Department of Finance and Administration regarding the care of certain state buildings, see § 29-5-2.

## § 35-3-29. Use or display of name or image of member of armed forces killed in active duty; permission of family required.

Any person or group that wishes to display on signs, goods or clothing the name or image of any member of the United States Armed Forces who was killed while on active duty shall first obtain the written consent for that display from the family of the deceased.

**HISTORY: Laws, 2006, ch. 591, § 2, eff from and after July 1, 2006.**

# CHAPTER 5.

# GUARDIANSHIP OF VETERANS

Sec.

35-5-1. Short title.
35-5-3. Definitions.
35-5-5. Petition for appointment of guardian.
35-5-7. Evidence of necessity for appointment of guardian of minor.
35-5-9. Evidence of necessity for appointment of guardian of mental incompetent.
35-5-11. Notice of petition for appointment of guardian.
35-5-13. Appointment of guardian; bond; sureties.
35-5-15. Repealed.
35-5-17. Filing of annual accounts and other proceedings by guardian.
35-5-19. Filing of vouchers by financial institutions.
35-5-21. Removal of guardian for failure to file account.
35-5-23. Compensation of guardians.
35-5-25. Use of ward's estate.
35-5-27. Discharge of guardian.
35-5-29. Furnishing of free copies of public records.
35-5-31. Commitment to Veterans Administration or other agency of the United States government.
35-5-33. Construction of chapter.

## § 35-5-1. Short title.

This chapter may be cited as the "Uniform Veterans' Guardianship Law."

**HISTORY: Codes, 1930, § 7352; 1942, § 7509; Laws, 1930, ch. 204.**

### RESEARCH REFERENCES

**ALR.**

Validity, construction, and application of Uniform Veterans' Guardianship Act. 113 A.L.R.5th 283.

**Am. Jur.**

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 46 et seq.

## § 35-5-3. Definitions.

As used in this chapter:

(a) The term "person" includes a partnership, corporation or an association.

(b) The term "bureau" means the United States Veterans' Bureau or its successor.

(c) The terms "estate" and "income" shall include only moneys received by the guardian from the bureau and all earnings, interest and profits derived therefrom.

(d) The term "benefits" shall mean all moneys payable by the United States through the bureau.

(e) The term "director" means the director of the United States Veterans' Bureau or his successor.

(f) The term "ward" means a beneficiary of the bureau.

(g) The term "guardian" as used herein shall mean any person acting as a fiduciary for a ward.

**HISTORY: Codes, 1930, § 7335; 1942, § 7493; Laws, 1930, ch. 204.**

**Federal Aspects—** The laws relating to veterans are administered by the United States Department of Veterans Affairs. See 38 USCS §§ 301 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 46 et seq.

## § 35-5-5. Petition for appointment of guardian.

Whenever, pursuant to any laws of the United States or regulation of the bureau, the director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.

A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a petition within thirty days after mailing of notice by the bureau to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the bureau and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the bureau in accordance with the laws and regulations governing the bureau.

**HISTORY: Codes, 1930, §§ 7336, 7338; 1942, §§ 7494, 7496; Laws, 1930, ch. 204.**

**Cross References —** Appointment of guardians of person and estate, or either, or persons adjudged to be of unsound mind, see § 41-21-61 et seq.

Appointment by the chancery court of a guardian of a minor, see § 93-13-13.

Appointment by the chancery court of guardian of estate of missing armed forces member, see § 93-13-161.

**Federal Aspects—** Minors, incompetents and other wards, see 38 USCS §§ 5501 et seq.

JUDICIAL DECISIONS

**1. In general.**
Under § 35-5-5, guardians may be appointed for veterans entitled to receive money from the United States Veterans' Bureau. Harvey v. Meador, 459 So. 2d 288, 1984 Miss. LEXIS 1985 (Miss. 1984).

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws § 47.
24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 51 and 52.

**CJS.**
39 C.J.S., Guardian and Ward §§ 33, 34.

## § 35-5-7. Evidence of necessity for appointment of guardian of minor.

Where a petition is filed for the appointment of a guardian of a minor ward, a certificate of the director, or his representative, setting forth the age of such minor as shown by the records of the bureau and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the bureau, shall be prima facie evidence of the necessity for such appointment.

**HISTORY: Codes, 1930, § 7339; 1942, § 7497; Laws, 1930, ch. 204.**

JUDICIAL DECISIONS

**1. In general.**
Under § 35-5-7, guardians may be appointed for minor wards of a veteran. Harvey v. Meador, 459 So. 2d 288, 1984 Miss. LEXIS 1985 (Miss. 1984).

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws § 47.

## § 35-5-9. Evidence of necessity for appointment of guardian of mental incompetent.

Where a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the director, or his representative, setting forth the fact that such person has been rated incompetent by the bureau on examination in accordance with the laws and regulations governing such bureau, and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the bureau, shall be prima facie evidence of the necessity for such appointment.

**HISTORY: Codes, 1930, § 7340; 1942, § 7498; Laws, 1930, ch. 204.**

**Cross References —** Provision for care of mentally ill war veterans in state mental institutions, see § 41-17-11.

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws § 47.
24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 51 and 52.

## § 35-5-11. Notice of petition for appointment of guardian.

Upon the filing of a petition for the appointment of a guardian, under the provisions of this chapter, the court shall cause such notice to be given as provided by law.

**HISTORY: Codes, 1930, § 7341; 1942, § 7499; Laws, 1930, ch. 204.**

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws § 47.
24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 55-58.

**CJS.**
39 C.J.S., Guardian and Ward §§ 33–36.

## § 35-5-13. Appointment of guardian; bond; sureties.

Before making an appointment under the provisions of this chapter the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this state. The court shall have the power from time to time to require the guardian to file an additional bond.

Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

**HISTORY: Codes, 1930, § 7342; 1942, § 7500; Laws, 1930, ch. 204.**

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 49, 50, 51.
24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 60-63.

**CJS.**
39 C.J.S., Guardian and Ward § 13.

## § 35-5-15. Repealed.

Repealed by Laws, 1973, ch. 332, § 1, eff from and after passage (approved March 20, 1973).

[Codes, 1930, § 7337; 1942, § 7495; Laws, 1930, ch. 204]

**Editor's Notes** — Former § 35-5-15 limited the number of wards to a guardian.

## § 35-5-17. Filing of annual accounts and other proceedings by guardian.

Every guardian who shall receive on account of his ward any moneys from the bureau shall file with the court annually, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereon in his hands at the date of such account and how invested. All accounts and petitions shall be filed with the clerk in duplicate and a certified copy of each of such accounts or petitions filed with the court shall be immediately forwarded by the chancery clerk to the bureau having jurisdiction over the area in which such court is located. The clerk in the certificate shall certify that a copy of same is being mailed to the said bureau, and after same has been mailed, the clerk of the court shall enter upon the records where the case is pending a notation that a copy of said petition or account has been forwarded by mail to the said bureau. Said mailing and said certificate shall have been performed and notation made on the docket thirty days before said matter shall be taken up for hearing by the court unless said notice shall be waived by the bureau.

After hearing on all accounts or other matters it shall be the duty of the guardian to furnish certified copies of all orders entered to the state office of the bureau.

**HISTORY: Codes, 1930, § 7343; 1942, § 7501; Laws, 1930, ch. 204; Laws, 1935, ch. 43.**

**Cross References** — Use of ward's estate for other purposes, see § 35-5-25.

### JUDICIAL DECISIONS

**1. In general.**

Federal administrator of veterans' affairs could intervene in administration of insane war veteran's estate and challenge alleged excessive allowance of attorney's fee to veteran's guardian in order to safeguard administration of money received from federal government on war risk contract. Hines v. McCoy, 172 Miss. 153, 159 So. 306, 1935 Miss. LEXIS 114 (Miss. 1935).

RESEARCH REFERENCES

**Am. Jur.**
24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 64 et seq.

**CJS.**
39 C.J.S., Guardian and Ward § 210.

## § 35-5-19. Filing of vouchers by financial institutions.

In any annual or final account or other proceedings under this chapter, whenever an accounting to the court is required, in the event that the account shall be presented by a bank or trust company which is subject to the supervision of the department of bank supervision of the State of Mississippi or of the comptroller of the currency of the United States, and such account, or the petition for the approval of same, shall contain a statement under oath by an officer of said bank or trust company showing that the vouchers covering the disbursements in the account presented are on file with the said bank or trust company, such bank or trust company shall not be required to file vouchers. The court, however, on its own motion, or on motion of the administrator of veterans affairs, or his duly authorized representative or attorney, may require that said vouchers be produced for examination and inspection.

**HISTORY: Codes, 1942, § 7501.5; Laws, 1960, ch. 217, § 12.**

**Editor's Notes —** Section 81-1-57 provides that wherever the words "Department of bank supervision" or "department" appear, when referring to the department of bank supervision, the words shall be construed to mean the department of banking and consumer finance.

**Cross References —** Similar provision pertaining to the vouchers of a guardian under law of guardian and ward, see § 93-13-67.

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws § 55.

## § 35-5-21. Removal of guardian for failure to file account.

If any guardian shall fail to file any account of the moneys received by him from the bureau on account of his ward within thirty days after such account is required by either the court or the bureau, or shall fail to furnish the bureau a copy of his accounts as required by this chapter, such failure shall be grounds for removal.

**HISTORY: Codes, 1930, § 7344; 1942, § 7502; Laws, 1930, ch. 204.**

RESEARCH REFERENCES

**Am. Jur.**

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 48, 50.

24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Form 69.

**CJS.**

39 C.J.S., Guardian and Ward §§ 50–55.

## § 35-5-23. Compensation of guardians.

In the final account the court or chancellor in vacation shall make an allowance to the guardian for his services not to exceed five percent (5%) on the value of the estate which shall be equitably prorated where the guardianship has been administered by two (2) or more guardians, except as hereinafter provided. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau in the manner provided by Section 35-5-17. In annual or partial accounts the court or chancellor may allow a guardian a reasonable commission for his services based upon the amount of disbursements, or, in proper cases where the amount based on disbursements would be inadequate, on the amount received or invested, or the total value of the estate as in other cases of guardianship, but not to exceed the maximum hereinabove provided for, except that in any event the court or chancellor in vacation, in its discretion may allow a minimum commission of One Hundred Dollars ($100.00) per annum. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond. The guardian's attorney may be allowed from the estate of the ward a reasonable attorney's fee for legal services to the estate or to the ward, if the court be of the opinion that the services were proper and rendered in good faith, the amount of the fee to be in the discretion of the court.

**HISTORY: Codes, 1930, § 7345; 1942, § 7503; Laws, 1930, ch. 204; Laws, 1936, ch. 245; Laws, 1966, ch. 320, § 2, eff from and after passage (approved March 8, 1966).**

RESEARCH REFERENCES

**ALR.**

Amount of attorneys' compensation in matters involving guardianship and trusts. 57 A.L.R.3d 550.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

**Am. Jur.**

24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 65 and 68.

**CJS.**

39 C.J.S., Guardian and Ward §§ 221-224.

## § 35-5-25. Use of ward's estate.

A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the bureau in the manner provided in Section 35-5-17.

**HISTORY: Codes, 1930, § 7347; 1942, § 7504; Laws, 1930, ch. 204.**

### JUDICIAL DECISIONS

**1. In general.**

Federal administrator of veterans' affairs could intervene in administration of insane veteran's estate and challenge allowance of attorney's fee to guardian, in order to safeguard money received from federal government on war risk insurance contract. Hines v. McCoy, 172 Miss. 153, 159 So. 306, 1935 Miss. LEXIS 114 (Miss. 1935).

### RESEARCH REFERENCES

**Am. Jur.**

24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Form 64.

**CJS.**

39 C.J.S., Guardian and Ward §§ 75-77 et seq.

## § 35-5-27. Discharge of guardian.

When a minor for whom a guardian has been appointed under the provisions of this chapter or other laws of this state shall have attained his or her majority, and if incompetent shall be declared competent by the bureau and the court, and when any incompetent ward, not a minor, shall be declared competent by said bureau and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

**HISTORY: Codes, 1930, § 7350; 1942, § 7507; Laws, 1930, ch. 204.**

### RESEARCH REFERENCES

**Am. Jur.**

77 Am. Jur. 2d, Veterans and Veterans' Laws § 50.

24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Forms 66 and 69.

## § 35-5-29. Furnishing of free copies of public records.

Whenever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in the benefits made available by such bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such bureau, with a certified copy of such record.

**HISTORY: Codes, 1930, § 7348; 1942, § 7505; Laws, 1930, ch. 204.**

**Cross References** — Furnishing free by the bureau of vital statistics of copies of birth and death certificates when necessary to establish claims for veterans' benefits, see § 35-3-9.

RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 46 et seq.

24A Am. Jur. Pl & Pr Forms (Rev), Veterans and Veterans' Laws, Form 69.

## § 35-5-31. Commitment to Veterans Administration or other agency of the United States government.

(1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be a person with mental illness, person with an intellectual disability, or otherwise of unsound mind, or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after the adjudication of the status of the person as may be required by law that commitment to a state psychiatric hospital or institution or other institution is necessary for safe-keeping or treatment, and it appears that the person is eligible for care or treatment by the Veterans Administration or other agency of the United States government, the court, upon receipt of a certificate from the Veterans Administration or such other agency showing that facilities are available and that the person is eligible for care or treatment in those facilities, may commit the person to the Veterans Administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner provided by the law of this state; and nothing in this section shall affect his right to appear and be heard in the proceedings. Upon commitment, the person, when admitted to any facility operated by the Veterans Administration or other agency within or without this state shall be subject to the rules and regulations of the Veterans Administration or other agency. The chief officer of any facility of the Veterans Administration or institution operated by any other agency of the United States to which the person is so committed shall, with respect to the person, be vested with the same powers as superintendents of state psychiatric hospitals or institutions within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments under this section are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the Veterans Administration or other agency of the United States government for care or treatment, shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order, and the courts of the committing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of the person and of determining the necessity for continuance of his restraint, as is provided in subsection (1) of this section with

respect to persons committed by the courts of this state. Consent is given to the application of the law of the committing state or District of Columbia in respect to the authority of the chief officer of any facility of the Veterans Administration or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the Veterans Administration or such other agency of the United States that facilities are available for the care or treatment of any person committed to a state psychiatric hospital or institution or for the care or treatment of persons similarly afflicted, and that the person is eligible for care or treatment, the superintendent of the state psychiatric hospital or institution may cause the transfer of the person to the Veterans Administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer of the court shall be notified of the transfer by the transferring agency. No person shall be transferred to the Veterans Administration or other agency of the United States if he is confined because of conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless before transfer, the court or other authority originally committing the person enters an order for the transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the Veterans Administration or other agency of the United States under the original commitment.

**HISTORY: Codes, 1930, § 7349; 1942, § 7506; Laws, 1930, ch. 204; Laws, 1944, ch. 176, § 1; Laws, 2008, ch. 442, § 13; Laws, 2010, ch. 476, § 8, eff from and after passage (approved Apr. 1, 2010).**

**Editor's Notes —** The laws relating to veterans are administered by the United States Department of Veterans Affairs. See 38 USCS §§ 301 et seq.

**Cross References —** Provision that laws relative to the commitment of persons in need of mental treatment (§§ 41-21-61 through 41-21-109) shall not affect the provisions of this section, see § 41-21-63.

## JUDICIAL DECISIONS

### ANALYSIS

1.-10. [Reserved for future use.]
11. Under former law.

**1.-10. [Reserved for future use.]**

**11. Under former law.**

Statute does not authorize commitment to federal hospital by circuit court of person charged with capital offense. Doggett v. State, 165 Miss. 488, 144 So. 854, 1932 Miss. LEXIS 295 (Miss. 1932).

Without a showing that certificate from official in charge of veterans' hospital had been received, accused insane veteran with tuberculosis could not be transferred from jail to veterans' hospital at guardian's request. Doggett v. State, 165 Miss. 488, 144 So. 854, 1932 Miss. LEXIS 295 (Miss. 1932).

### RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 48 et seq.

## § 35-5-33. Construction of chapter.

This chapter shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the bureau.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**HISTORY: Codes, 1930, §§ 7351, 7353; 1942, §§ 7508, 7510; Laws, 1930, ch. 204.**

### RESEARCH REFERENCES

**Am. Jur.**
77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 46 et seq.

# CHAPTER 7.

# VETERANS' HOME PURCHASE LAW

Sec.
35-7-1. Short title.
35-7-3. Declaration of public policy.
35-7-5. Definitions.
35-7-7. Creation of Veterans' Home Purchase Board; composition; qualifications, appointment, terms of office and compensation of members; general powers and duties of board; officers and employees.
35-7-9. Limitation on costs of administration of chapter.
35-7-11. Offices of board; staff and related expenses; assistance from county veterans service officers and others.
35-7-13. Duty of public officials to cooperate with board.
35-7-15. Eligibility of veterans; applications; priority preferences; waiting lists; distribution of assistance.
35-7-17. Acquisition of homes for resale to veterans; refinancing of permanent mortgage loans; limitations as to applications for purchase.
35-7-19. Acquisition by board of leasehold interests in certain lands for resale to veterans.
35-7-21 and 35-7-23. Repealed.
35-7-25. Selection of home by veteran; contract between board and veteran; terms of payment; appraisal.
35-7-27. Details of contract between board and purchaser.
35-7-29. Execution of general deed and deed of trust; notice of veteran's intent to transfer property.
35-7-31. Escrow agreements.
35-7-33. Satisfaction of taxes, assessments, etc.; improvements.
35-7-35. Cancellation; foreclosure.
35-7-37. Care of property reverting to board.
35-7-39. Second purchases of property for veteran.
35-7-41. Rights of surviving spouse.
35-7-43. Removal of disability of minority.
35-7-45. Funds; sale of mortgages; issuance of notes.
35-7-47. Special consideration in event of hardship.
35-7-49. Confidentiality of information obtained in loan processing.
35-7-51. Criminal sanctions for fraudulent conduct.

## § 35-7-1. Short title.

This chapter may be cited as the Veterans' Home Purchase Law.

**HISTORY: Codes, 1942, § 7517; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 1; Laws, 1948, ch. 500, § 1; Laws, 1950, ch. 465, § 1; Laws, 1987, ch. 425, § 1, eff from and after May 1, 1987.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Cross References** — Housing authorities laws, see § 43-33-1 et seq.

### JUDICIAL DECISIONS

**1. Board as arm of state.**

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

## § 35-7-3. Declaration of public policy.

It is hereby declared to be the public policy of this state to aid its veterans to become rehabilitated and to become as quickly as possible self-sustaining, thereby strengthening their citizenship and expressing the gratitude of all the peoples of this state for such public services they have rendered, and to that end this chapter is passed.

**HISTORY: Codes, 1942, § 7532; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 24; Laws, 1948, ch. 500, § 24; Laws, 1950, ch. 465, § 25; Laws, 1987, ch. 425, § 2, eff from and after May 1, 1987.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

## § 35-7-5. Definitions.

When used in this chapter, the word or term:

(a) "Veterans" includes:

(i) Any person who, upon presentation of his U.S. armed services record is eligible for a certificate of eligibility for a home loan guaranty from the U.S. Veterans' Administration.

(ii) Unremarried surviving spouses of the above-described eligible persons who died as the result of service or service-connected injuries. The unremarried spouse of any eligible veteran who has not purchased a home since the veteran's death shall be eligible for the benefits of this chapter, except that the benefits of a Veterans' Administration guaranteed loan will not be available.

(iii) The spouse of any member of the armed forces serving on active duty who is listed as missing in action, or is a prisoner of war, and has been so listed for a total of more than ninety (90) days.

Any such person shall have been discharged under conditions other than dishonorable from the branch of service in which he or she served, shall have been a bona fide resident of the United States of America at the time of his or her enlistment, induction, commission or drafting, and shall have lived in this state for two (2) years immediately preceding entry to extended active duty or the filing of the purchase application, or have married a person who has been a legal resident of this state for at least two (2) consecutive years immediately preceding the marriage and application.

The veteran must obtain a certificate of eligibility for home loan guaranty from the Veterans' Administration and present both an original certificate and a record of service or original discharge (DD 214) to the board.

(b) "Applicant" is a person meeting the criteria of "veteran" who has made written application to the board in the format prescribed by the board.

(c) "Mortgagor" is the person described as "applicant" who has subsequently executed a deed of trust on real property to the board, and may otherwise be described as "owner" or title holder.

(d) "Board" means the Veterans' Home Purchase Board of the State of Mississippi.

(e) "Home" means a parcel of real estate upon which there is a single family dwelling house and such other buildings as will, in the opinion of the board, suit the needs of the purchaser and his dependents as a place of abode.

**HISTORY: Codes, 1942, § 7518; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 2; Laws, 1948, ch. 500, § 2; Laws, 1950, ch. 465, § 2; Laws, 1952, ch. 311, § 1; Laws, 1956, ch. 351; Laws, 1958, ch. 460, § 1; Laws, 1964, ch. 477; Laws, 1966, ch. 277, § 1; Laws, 1987, ch. 425, § 3, eff from and after May 1, 1987.**

**Editor's Notes —** The laws relating to veterans are administered by the United States Department of Veterans Affairs. See 38 USCS §§ 301 et seq.

Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Federal Aspects—** Housing and small business loans for veterans, see 38 USCS §§ 3701 et seq.

## § 35-7-7. Creation of Veterans' Home Purchase Board; composition; qualifications, appointment, terms of office and compensation of members; general powers and duties of board; officers and employees.

The administration of the provisions hereof is vested in a Veterans' Home Purchase Board consisting of six (6) members who shall be appointed, or reappointed, by the Governor, with the advice and consent of the Senate. Members appointed to the board shall be veterans of either World War II, the Korean Conflict, the Southeast Asia Conflict, the Persian Gulf Conflict or have served in active duty for at least one hundred eighty (180) days during a time of war or a conflict in which a campaign ribbon or medal was issued and shall possess a background in business, banking, real estate or the legal profession which enables them to carry out the duties of the board. No state/department commander of any federally recognized veterans organization, no national officer of any federally recognized veterans organization and no member of the Mississippi Council of Veterans Organizations shall be eligible for appointment to the board until the expiration of a period of three (3) years after the termination of his service in such disqualifying positions. Appointments shall be staggered, with each Governor appointing or reappointing two (2) members in the first year of his administration; one (1) member in the second year, two (2) members in the third year, and one (1) member in the fourth year. Appointments for terms that expire in 1988 shall be made as follows: one (1) shall be made for a term ending on July 1, 1989; one (1) shall be made for a term ending on July 1, 1991; and two (2) shall be made for a term ending on July 1, 1992. Persons appointed to succeed the two (2) members whose terms expired in 1986, or any such member holding over after 1986 because no successor was appointed, shall serve until July 1, 1990. After the expiration of the foregoing terms, all appointments shall be for a term of four (4) years from the expiration date of the previous term. From and after July 1, 1988, one (1) appointee shall be selected from each of the five (5) congressional districts of this state as such districts are composed on May 1, 1987, and one (1) appointee shall be selected from the state at large. Any vacancy occurring during a term shall be filled by appointment of a member for the unexpired portion of the term.

The board is hereby authorized and empowered to make and promulgate such reasonable rules and regulations under this chapter as it shall deem to be necessary or advisable and to enforce the same. The board shall have authority to render the final decision on the purchase application process, approval of purchases, funding of purchase commitments, servicing loans and default, property security, management, resale, release from security, and all other matters relating to the purchases and loans made under this law. The board shall likewise, by an order spread on its minutes, elect a chairman and vice chairman to serve for one-year terms, and all such officers are eligible to succeed themselves in such offices. The chairman may appoint a three-member loan committee from the membership of the board and shall specify the conditions, responsibilities and authority of such committee.

Each member of the board and his successor shall be reimbursed all of his actual and necessary traveling and other expenses incurred in the attendance of the meetings of the board or in the performance of other duties in connection with the business of the board as provided for state officers and employees in Section 25-3-41, and shall be allowed a per diem as provided in Section 25-3-69 for such attendance; provided that the number of days per diem shall not exceed sixty-six (66) days for the chairman and fifty (50) days for other members of the board during any one (1) fiscal year. The above limitation of days per year shall not apply to board members appointed on a full-time basis to the loan committee.

The director, or other executive officer employed by the board, shall execute a surety bond in the sum of One Hundred Thousand Dollars ($100,000.00), conditioned upon the faithful performance of his duties and upon his accounting for all monies coming into his hands; and each employee handling funds shall execute a like bond in the sum of Fifteen Thousand Dollars ($15,000.00), and the premiums thereon shall be paid from the funds provided for administering this chapter.

The board may designate one (1) of its employees as the acting director or executive officer by a vote of the majority of the members of the board, officially recorded in the minutes of a regular or special meeting, and such acting director shall be vested with all the authority conferred upon the director by the provisions of this chapter; but such acting director may not serve for a continuous period of time in excess of six (6) months, and the acting director, when so designated, will be required to furnish surety bond in the same amount and under the same conditions as the director. The purpose of this provision is to designate an executive officer during any temporary illness, absence or incapacity of the regularly designated director.

The board may designate one (1) of its employees by a vote of the majority of the members of the board, officially recorded in the minutes of a regular or special meeting, to be authorized to sign a Deed of Conveyance or other closing documents necessary as to not delay the closing or settlement of a home purchase during the absence or unavailability of the director.

The board may select and employ such expert, technical and clerical assistance as in its judgment may be necessary in the proper administration of said board and fix the salaries of such employees.

The board is empowered to employ auditors and accountants to examine the books, accounts and records of the board if it so desires, and the board is also authorized to employ legal counsel if it deems such a course necessary in the proper administration of its affairs.

**HISTORY: Codes, 1942, §§ 7519, 7530; Laws, 1936, ch. 199; Laws, 1946, ch. 221, §§ 3, 4, 20; Laws, 1948, ch. 500, §§ 3, 4, 18; Laws, 1950, ch. 465, §§ 3, 4, 18; Laws, 1958, ch. 460, § 2; Laws, 1964, ch. 478; Laws, 1968, ch. 483, § 1; Laws, 1973, ch. 376, § 1; Laws, 1980, ch. 560, § 12; Laws, 1987, ch. 425, § 4; Laws, 1994, ch. 346, § 1; Laws, 2009, ch. 305, § 1; Laws, 2014, ch. 344, § 1, eff from and after passage (approved March 14, 2014).**

**Cross References —** Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Availability to board of proceeds of bond issued by the Mississippi Home Corporation, see § 43-33-701 et seq.

### JUDICIAL DECISIONS

**1. Board as arm of state.**

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

## § 35-7-9. Limitation on costs of administration of chapter.

The cost of administering this chapter shall not exceed in any one (1) fiscal year two percent (2%) of mortgage loans in force. Administrative expenses shall include all costs for: personnel, travel, subsistence, contractual services, commodities and equipment utilized in operating the offices and facilities of the board and shall not include expenditures reimbursed to the board by applicants, veterans/owners, insurance companies and funds passing through escrow, regardless of the budget and accounting codes utilized. The amount of contracts in force for the purpose of this section shall be considered the amount in force at the end of the fiscal year in which the expenditures for administration are incurred.

**HISTORY: Codes, 1942, § 7519; Laws, 1936, ch. 199; Laws, 1946, ch. 221, §§ 3, 4; Laws, 1948, ch. 500, §§ 3, 4; Laws, 1950, ch. 465, §§ 3, 4; Laws, 1958, ch. 460, § 2; Laws, 1964, ch. 478; Laws, 1973, ch. 376, § 1; Laws, 1987, ch. 425, § 5; Laws, 2015, ch. 333, § 1, eff from and after July 1, 2015.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Cross References** — Inclusion of authorized offices and staff within administrative cost limitations imposed on Veterans' Home Purchase Board, see § 35-7-11.

Payment of expenses of administering this chapter from board's revolving fund, see § 35-7-45.

## § 35-7-11. Offices of board; staff and related expenses; assistance from county veterans service officers and others.

The board is hereby authorized to establish offices and employ an adequate staff to serve the citizens of Mississippi as it deems necessary; and the expenses of such offices shall be included within the administrative cost limitation prescribed in Section 35-7-9. The board may utilize the services of county veterans service officers and other such persons in contact with the veteran community to advise and assist the board; however, such persons assisting shall not be employees nor officially represent the board, and shall perform their services without cost to the board.

**HISTORY: Codes, 1942, § 7519.5; Laws, 1946, ch. 221, § 5; Laws, 1948, ch. 500, § 5; Laws, 1950, ch. 465, § 5; Laws, 1987, ch. 425, § 6, eff from and after May 1, 1987.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

### JUDICIAL DECISIONS

**1. Board as arm of state.**

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

## § 35-7-13. Duty of public officials to cooperate with board.

It is hereby made the duty of all state, county and city officials to furnish and give all required information to the board, upon request and without charge therefor.

**HISTORY: Codes, 1942, § 7519.5; Laws, 1946, ch. 221, § 5; Laws, 1948, ch. 500, § 5; Laws, 1950, ch. 465, § 5.**

## § 35-7-15. Eligibility of veterans; applications; priority preferences; waiting lists; distribution of assistance.

Any person deeming himself a veteran, and desiring to benefit under the provisions of this chapter, shall submit to the board information, in such form as may be prescribed, that will enable the board to determine his eligibility and qualifications. The board may make such further inquiries and investigations as it deems proper and necessary in order to determine such eligibility and qualifications. Applicant priority for processing shall be in accordance with the order in which the fully completed application forms are received and verified as eligible for consideration in the board's Pearl, Mississippi, office. Once accepted, the qualified and eligible applicant will retain his priority on a waiting list until the time that funds are available to fully process his application, or until it is ascertained that the applicant is no longer eligible or qualified for the loan, or until the applicant withdraws himself from consideration. The board may suspend the taking of applications from time to time based on availability of funds. The board shall not maintain applications which are projected to exceed one (1) year before final processing. In each instance of suspension, the board will project a date in the future when applications will be again accepted in order that persons inquiring for application may know to do so after such date.

The board may act upon any purchase loan application or related matter by telephone poll of the board members taken by the executive director, or his designee, in order to facilitate an applicant's loan request before the next meeting of the board. Action taken upon such a poll may be taken only upon majority vote of the entire board. The action of the board taken by telephone poll shall be placed in the minutes of the board at its next meeting.

Veterans who are otherwise qualified and who have a service connected, permanent disability, as verified by the Veterans' Administration or a branch of the United States Armed Forces, rating fifty percent (50%) or greater, will receive priority over other applicants waiting for consideration. Veterans who have not purchased a single family, permanent home since their honorable discharge from active duty and have not owned a single-family residence in the State of Mississippi while serving in the armed services may be given priority over other veterans waiting to make application. This priority will be second only to those veterans given priority due to a service-connected disability of fifty percent (50%) or greater. Such returning veterans must meet all other eligibility and qualification criteria, including Mississippi residence requirements. This priority will apply only during the first five (5) years following the veteran's discharge and will apply to veterans who served in Vietnam regardless of time since discharge.

The board shall establish rules and procedures to provide a waiting system, limitations on waiting, and the priority preference given to disabled and other special veteran groups when the number of veterans desiring to apply for a purchase at any time exceeds the funds available in the revolving fund for purchases or the number of applications that can be reasonably processed.

It is the intent of the Legislature that access to the revolving fund be available on an equitable basis to all eligible veterans throughout the state. The board is, therefore, authorized to travel, conduct and attend meetings, advertise and announce through public service and commercial media, prepare and distribute audio/visual and printed publications, and otherwise announce and promote among veterans the provisions of this law.

The board shall monitor application and purchase distribution throughout the state based upon available information concerning veteran population in certain geographic units such as districts, counties and major metropolitan areas, and is authorized to halt, limit or place temporary moratoriums on further purchase applications from areas determined by the board to have excess purchases in relation to the veteran population of that area. At the same time, the board shall have the authority to employ discriminatory announcement and promotion activities in areas determined to have a shortage of purchases. The board shall not set quotas or other inflexible limits on any geographic unit nor shall the board solicit purchase applications from any veteran, group of veterans or geographic unit.

**HISTORY: Codes, 1942, §§ 7518, 7521; Laws, 1936, ch. 199; Laws, 1946, ch. 221, §§ 2, 8; Laws, 1948, ch. 500, §§ 2, 8; Laws, 1950, ch. 465, §§ 2, 8; Laws, 1952, ch. 311, § 1; Laws, 1956, ch. 351; Laws, 1958, ch. 460, § 1; Laws, 1964, ch. 477; Laws, 1966, ch. 277, § 1; Laws, 1987, ch. 425, § 7; Laws, 2003, ch. 353, § 1; Laws, 2006, ch. 362, § 1, eff from and after passage (approved Mar. 13, 2006).**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Federal Aspects —** The laws relating to veterans are administered by the United States Department of Veterans Affairs. See 38 USCS §§ 301 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Interest.

**1. In general.**

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans

Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

Where a veteran acquired a lot, then conveyed it to a builder under agreement for the builder to construct a house, not to exceed the sum of $4,000, and the house would be approved by the veterans farm and home board so that the agency may lend money, the contractor was not bound to accept as payment for the house the appraisal value which the board might place on the house. La Bella v. Baggett, 215 Miss. 101, 60 So. 2d 576, 1952 Miss. LEXIS 542 (Miss. 1952).

**2. Interest.**

Where veteran acquired lot then conveyed it to a builder under agreement for the builder to construct the house for $4,000 subject to approval of veterans farm and home board, and the chancellor found that the contractors were entitled to recover $4,000 for constructing the house, the veteran was liable for interest only from the date when the loan was approved. La Bella v. Baggett, 215 Miss. 101, 60 So. 2d 576, 1952 Miss. LEXIS 542 (Miss. 1952).

## § 35-7-17. Acquisition of homes for resale to veterans; refinancing of permanent mortgage loans; limitations as to applications for purchase.

(1) The board may acquire for sale to a veteran a home situated in the State of Mississippi, provided that the cost of such home to the board does not exceed the maximum loan limit as provided in 38 USCS Section 3703 by application of the housing loan guaranty for housing loans to veterans as defined in 38 USCS Section 3701. A veteran purchasing such home may advance a sum of money on the purchase price of the home. In addition to the home acquisition, the board may also provide the funds for any funding fee charged by the Department of Veterans Affairs for any loan contract underwritten or guaranteed by the Department of Veterans Affairs even if the home acquisition cost and the funding fee together exceed the maximum loan amount.

Nothing contained in this chapter shall prevent the acquisition for sale to a veteran by the Veterans' Home Purchase Board of the State of Mississippi of a home, the title to which has, prior to the date of such purchase, been vested in such veteran if title thereto is vested in such veteran due to (a) the veteran previously owning the land and the purpose of the application is to finance a home on the land; (b) the veteran having taken title to the land for the purpose of obtaining construction financing or otherwise constructing or making a major renovation of a home on the land; or (c) the veteran having previously taken title to the land and home under a nonpermanent purchase money lien to secure his ability to purchase the property while awaiting processing, approval and closing of his application with the board.

The proceeds of the purchase approved may be applied toward the liquidation of a purchase money lien, contractor's or materialman's lien, or temporary construction loan outstanding against the property if the board should determine that the indebtedness secured by such liens or loan is not adequately financed on a permanent basis.

(2) The limit provided above on the cost of property to the board may be exceeded in the case of a veteran who has been certified for the purchase of a

home under Public Law No. 782 of the 80th Congress, by Public Law No. 286 of the 81st Congress, and other amendments thereto, which provides special benefits to veterans who have lost the use of both legs. In such cases where the federal government donates half of the cost of a dwelling for such a disabled veteran, as provided by Public Law No. 286, and, further, where the Department of Veterans Affairs guarantees half of the remainder of the purchase price, the board may increase the amount of money to be advanced for such a purchase to the maximum loan limits, as provided above.

(3) Except as otherwise provided in subsection (5) of this section, the board shall not consider an application to refinance a home with adequate permanent financing with a lending institution, individual or other entity, or the refinancing of the veteran's equity in a home to which he has title. The board will consider, on a case-by-case basis, the adequacy of financing when a veteran has title to the property and financing with variable rates, terms or payments where the board can ascertain that the loan was made with temporary intent on either the part of the veteran or lender, or where the veteran is in jeopardy of losing the financing due to no fault of his own. In such cases, the board shall ascertain that the present lender has no objection to the early payoff of the loan and that the veteran has not obtained and continued any form of temporary financing for the purpose of waiting for financing by the board when he could have previously obtained adequate, permanent financing.

(4) The board shall not consider applications for purchase that would provide the veteran with a second home, or provide funds to be used either directly or indirectly for investment purposes. The veteran must divest himself of any personal residence before being eligible to close the board purchase on a new property. Divestment may be accomplished by sale which transfers title to another individual, or by an irrevocable lease/purchase contract, or land contract where title passes after the prescribed payment. This requirement that the veteran divest himself may be waived by the board in cases where the board can ascertain that the ownership of such property was originally intended as a temporary residence or a condominium or mobile home, or that the veteran's present residence is inadequate for his needs; and in cases where the requirement to sell on short notice will cause a financial hardship or loss to the veteran in the market place; and in cases where the sale of the present residence is not necessary to free the veteran of obligations to qualify financially for the new loan. When such waiver is granted, the veteran must agree in writing (a) not to reside in the former residence for a period of ten (10) years, (b) that the rent proceeds in excess of mortgage payments and cash expenses on the old home will be paid to the board as a reduction to the loan balance on the new home, and (c) that, at the sale of the old home within a period of ten (10) years, a full disclosure of the sale shall be made to the board and proceeds of the sale in excess of mortgage payoff and actual cost of the sale will be paid to the board as a reduction to the balance of the existing loan with the board.

(5) The board may provide for the refinancing of permanent mortgage loans under the following conditions:

(a) Funds are available to the board from the issuance of its notes or bonds in amounts in excess of the funds required for applicants on a waiting list for their first loan from the board.

(b) The veteran has an outstanding mortgage or mortgages on the property to be refinanced.

(c) The terms and conditions of the refinance loan complies with the Department of Veterans Affairs guaranteed loan program guidelines for refinance.

(d) The refinance loan shall be limited to the payoff of existing mortgages plus the closing costs of the transaction and further limited to eighty percent (80%) of the property value or amount of the Department of Veterans Affairs guaranty available on the refinance loan.

(e) The board may establish interest rates, terms and conditions on refinance loans which may differ from original loans made by the board.

**HISTORY: Codes, 1942, § 7520; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 7; Laws, 1948 ch. 493, § 1 ch. 500, § 7, 1950, ch. 465, § 7; Laws, 1956, ch. 352, § 1; Laws, 1958, ch. 460, § 3; Laws, 1962, ch. 478, § 1; Laws, 1964, ch. 479; Laws, 1968, ch. 481, § 1; Laws, 1974, ch. 404, § 1; Laws, 1979, ch. 313, § 1; Laws, 1985, ch. 501, § 2; Laws, 1987, ch. 425, § 8; Laws, 1993, ch. 409, § 1; Laws, 1996, ch. 363, § 1; Laws, 1999, ch. 325, § 1; Laws, 2014, ch. 345, § 1, eff from and after passage (approved March 14, 2014).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. In the last sentence in (4), “and (c) that” was substituted for “(c) and that.” The Joint Committee ratified the correction at its July 24, 2014, meeting.

**Editor’s Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

“SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987.”

**Cross References —** Additional limitations on the board’s power to purchase property for resale to a veteran, see § 35-7-25.

Board’s application of proceeds from issuance of notes to refinancing permanent mortgage loans or increasing purchase limit on homes, see § 35-7-45.

**Federal Aspects—** Housing and small business loans for veterans, see 38 USCS §§ 3701 et seq.

## § 35-7-19. Acquisition by board of leasehold interests in certain lands for resale to veterans.

In addition to and supplemental to any other authority vested in the Veterans Home Purchase Board, the board is authorized and empowered to purchase a leasehold interest in sixteenth section lands, and leasehold interests in other lands owned by the state or a department thereof, for resale of such interest in land to a qualified veteran for a home when the duration of such leasehold interest exceeds the amortization period of the board’s loan by not less than fourteen (14) years or contains automatic renewal to the leaseholder and lienholders. The purchase price of the leasehold interest in the sixteenth section lands and leasehold interest in other lands owned by the state or a department thereof shall not exceed the maximum purchase price as otherwise provided by law. However, the veteran acquiring a home under the provisions of this chapter shall be given the right to advance a sum of money on the total purchase price of the leasehold interest of the home above the maximum purchase price to the board. Wherever applicable, all other provisions of statutes governing said board shall apply, and the board may prescribe and adopt needful and necessary rules and regulations to administer this section.

**HISTORY: Codes, 1942, § 7520.1; Laws, 1966, ch. 537, § 1; Laws, 1970, ch. 456, § 1; Laws, 1987, ch. 425, § 9, eff from and after May 1, 1987.**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:
"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

## §§ 35-7-21 and 35-7-23. Repealed.

Repealed by Laws, 1987, ch 425, § 21, eff from and after May 1, 1987.

§ 35-7-21. [Codes, 1942, §§ 7520, 7520.3; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 7; Laws, 1948, ch. 493, § 1, ch. 500, § 7; Laws, 1950, ch. 465, § 7; Laws, 1956, ch. 352, § 1; Laws, 1958, ch. 460, § 3; Laws, 1962, ch. 478, § 1; Laws, 1964, ch. 479, ch. 482; Laws, 1968, ch. 481, § 1; Laws, 1974, ch 404, § 2; Laws, 1979, ch 313, § 2; Laws, 1985, ch 501, § 3]

§ 35-7-23. [Codes, 1942, § 7520.5; Laws, 1955, Ex Sess, ch. 125, § 1; Laws, 1956, ch. 352, § 3; Laws, 1958, ch. 460, § 4; Laws, 1962, ch. 478, § 2; Laws, 1964, ch. 480; Laws, 1968, ch. 482, § 1; Laws, 1979, ch 313, § 3; Laws, 1985, ch 501, § 4]

**Editor's Notes —** Former § 35-7-21 provided for acquisition by former veterans farm and home board of additional land near veteran's homestead for resale to veteran.

Former § 35-7-23 provided for advance of money for additional construction, renovation, or improvement to veteran's residence.

## § 35-7-25. Selection of home by veteran; contract between board and veteran; terms of payment; appraisal.

(1) When a veteran has been authorized by the board to select the home he desires, he shall submit his selection in such form as may be prescribed by the board. If the board is satisfied of the desirability of the property submitted and if such veteran has agreed with the board to actually reside upon such property within sixty (60) days from the date of purchase by the board, and if the price of said property to the board does not exceed the maximum provided in Section 35-7-17, then the board shall be empowered to purchase said property from the owner thereof, including the veteran under the provisions of Section 35-7-17(1), upon such terms as may be by them agreed upon. The board, in its discretion, is authorized to enter into a contract with the veteran

for the sale and to consummate the sale of said property to said veteran. The board shall fix the selling price of such property by adding to the purchase price of said property or to the value of said property as determined by the board when such property is acquired by the board in a manner other than by purchase, as in foreclosure or repossession, all expenses incurred and estimated to be incurred by the board in relation thereto, inclusive of interest, administration, appraisals, examination of title, incidental expenses and such sum as shall be deemed necessary to meet unforeseen contingencies. The purchaser shall make an initial payment of at least twenty percent (20%) of the selling price of the property; however, the board may reduce or waive said initial payment for any veteran provided the loan contract is underwritten or guaranteed by the Veterans' Administration in accordance with the terms of the Servicemen's Readjustment Act of 1944, as amended. The balance of said selling price may be amortized over a period to be fixed by the board, but not exceeding thirty (30) years, together with interest thereon at a rate which shall be fixed by the board, which shall in no case be less than two and one-half percent (2 ½%) per annum, and which shall in no case be higher than the rate of interest authorized and permitted by the Veterans' Administration for loans guaranteed under the provisions of Title III of the Servicemen's Readjustment Act of 1944, as amended. The purchaser shall have the right at any time to pay any or all installments still remaining unpaid. In any individual case, the board may for good cause postpone from time to time, upon such terms as the board may deem proper, the payment of the whole or any part of any installment of the selling price or interest thereon. The board is empowered in each individual case to specify the terms of the contract entered into with the purchaser, not contrary to the provisions of this chapter.

(2) Before the purchase of any property by the board, there must be filed with said board an appraisement of the fair and reasonable value of such property by a qualified appraiser. Each appraisement shall state, among other things, that it is made in good faith and that the valuation is honestly determined and represents the bona fide opinion of the maker.

(3) The board, before consummating the purchase under the provisions of this section, shall be satisfied that title to the property sought to be purchased is good.

**HISTORY: Codes, 1942, §§ 7520, 7522; Laws, 1936, ch. 199; Laws, 1946, ch. 221, §§ 7, 9-11; Laws, 1948, ch. 493, § 1, ch. 500, §§ 7, 9-11; Laws, 1950, ch. 465, §§ 7, 9-11; Laws, 1956, ch. 352, §§ 1, 2; Laws, 1958, ch. 460, §§ 3, 5; Laws, 1962, ch. 478, §§ 1, 3; Laws, 1964, ch. 479; Laws, 1968, ch. 481, §§ 1, 2; Laws, 1974, ch. 404, § 3; Laws, 1979, ch. 313, § 4; Laws, 1985, ch. 501, § 5; Laws, 1987, ch. 425, § 10; Laws, 2009, ch. 306, § 1, eff from and after passage (approved Mar. 2, 2009).**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Cross References** — Loan requirements; purchase of loans, see § 43-33-719.

**Federal Aspects**— Readjustment benefits, see 38 USCS §§ 3701 et seq. Chapter 37 of title 38, United States Code [38 USCS §§ 3701 et seq.], is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, referred to in this section, and may be considered to be an amendment to such Title III.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Interest.

**1. In general.**

Where a veteran acquired a lot, then conveyed it to a builder under agreement for the builder to construct a house, not to exceed the sum of $4,000, and the house would be approved by the veterans farm and home board so that the agency may lend money, the contractor was not bound to accept as payment for the house the appraisal value which the board might place on the house. La Bella v. Baggett, 215 Miss. 101, 60 So. 2d 576, 1952 Miss. LEXIS 542 (Miss. 1952).

**2. Interest.**

Where veteran acquired lot then conveyed it to a builder under agreement for the builder to construct the house for $4,000, subject to approval of veterans farm and home board, and the chancellor found that the contractors were entitled to recover $4,000 for constructing the house, the veteran was liable for interest only from the date when the loan was approved. La Bella v. Baggett, 215 Miss. 101, 60 So. 2d 576, 1952 Miss. LEXIS 542 (Miss. 1952).

## § 35-7-27. Details of contract between board and purchaser.

The contract entered into between the board and the purchaser shall provide, among other things, that the purchaser intends to maintain said farm or home as his place of residence, that the purchaser shall keep the same in good order, that the purchaser shall keep in repair all buildings, fences and other permanent improvements, situated thereon, and that the purchaser shall insure and keep insured against fire and other hazards, all buildings and other permanent improvements on said property, in an insurance company authorized to do business in Mississippi, with a loss payable clause or standard New York mortgage clause in standard form payable to the board as its interest shall appear, in such amount or amounts and in such insurance company or companies as shall be agreeable to the board.

**HISTORY: Codes, 1942, § 7523; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 12; Laws, 1948, ch. 500, § 12; Laws, 1950, ch. 465, § 12.**

## § 35-7-29. Execution of general deed and deed of trust; notice of veteran's intent to transfer property.

When a purchaser shall have paid as much as twenty percent (20%) on such home, or when the purchaser shall cause the amount due on such purchase to be underwritten by the United States Department of Veterans Affairs under the provisions of the Servicemen's Readjustment Act of 1944, the board may determine the amount of the initial payment to be made by the veteran, if any, and the board is hereby authorized and empowered to execute to the purchaser a deed to the property and to take back from such purchaser a trust deed to secure the balance due the board on such transaction, payable over a period of not exceeding thirty (30) years on such amortization plan as the board may determine. Such trust deed and evidence of debt shall run in favor of the Veterans' Home Purchase Board of the State of Mississippi.

It is the intent of the Legislature that the benefits of this purchase permitting home ownership be enjoyed by the eligible veteran. Although it is recognized that many events may cause transfer of title or habitation during the term of the loan, the veteran is encouraged to retain permanent ownership of, and to reside in, the home; therefore, a veteran desiring to transfer his property should provide at least thirty (30) days' advance notice to the board. Upon notice, he or his designated agent shall be provided a current accounting on his loan, instruction on transfer procedures established by the board, and information concerning the impact of a transfer to him and the new owner.

All loans secured by deed of trust, except those guaranteed by the United States Department of Veterans Affairs, shall be made under a deed of trust providing an acceleration clause (due on sale) when the title is transferred from the original veteran. The board may waive the execution of such clause by specific majority decision of the board and shall establish procedures and criteria for consideration of such waiver.

**HISTORY: Codes, 1942, § 7523.5; Laws, 1946, ch. 221, § 13; Laws, 1948, ch. 500, § 13; Laws, 1948, ch. 500, § 13; Laws, 1950, ch. 465, § 13; Laws, 1958, ch. 460, § 6; Laws, 1987, ch. 425, § 11; Laws, 1991, ch. 361 § 1, eff from and after passage (approved March 15, 1991).**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Federal Aspects—** Readjustment benefits, see 38 USCS §§ 3701 et seq. Chapter 37 of title 38, United States Code [38 USCS §§ 3701 et seq.], is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, referred to in this section, and may be considered to be an amendment to such Title III.

### RESEARCH REFERENCES

**ALR.**

What transfers justify acceleration under "due-on-sale" clause of real-estate mortgage. 22 A.L.R.4th 1266.

## § 35-7-31. Escrow agreements.

The board is authorized to enter into escrow agreements with the purchaser for the payment of anticipated taxes and hazard insurance premiums, or for the payment of life insurance premiums in cases where the board requires a life insurance policy to cover the unpaid balance of the indebtedness.

All funds collected as escrow items for the benefit of the veteran as insurance premiums, taxes, appraisal fees, and other funds belonging to the veteran, and not the state revolving fund, shall be maintained and accounted for separately from the special revolving fund, although the receipt of such funds may be commingled with installment payments or other payments to the board. The board shall establish separate accounts and trusteeships for this purpose exclusive of requirements that agencies of the state commingle funds into one (1) state treasury account. Interest earned on such deposits shall accrue to the state revolving fund of the board, and shall be paid to the revolving fund annually.

**HISTORY: Codes, 1942, § 7524; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 14; Laws, 1948, ch. 500, § 14; Laws, 1950, ch. 465, § 14; Laws, 1987, ch. 425, § 12, eff from and after May 1, 1987.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Cross References** — Commingling of funds in board's revolving fund, exclusive of escrow funds, see § 35-7-45.

## § 35-7-33. Satisfaction of taxes, assessments, etc.; improvements.

If the purchaser fails or neglects to pay, satisfy and discharge at maturity any taxes, assessments or other charges or encumbrances which shall be a lien upon the property being purchased from the board, or any part thereof, or any taxes or assessments levied or assessed upon the land so bought or the interest created by the contract or purchase of such property, or if the purchaser fails or neglects to keep the buildings and other permanent improvements upon such property insured as provided by this chapter, or if the purchaser fails or neglects to keep in good order and repair all buildings, fences and other permanent improvements situated upon such property as provided by this chapter, then, and in any such event, it shall be lawful for the board to pay, satisfy, discharge, settle or compromise such taxes, assessments, charges or encumbrances, or to insure said buildings, and permanent improvements, or any of them, or to do or cause to be done the work and supply the material necessary to keep the buildings, fences and other improvements situated upon such property in good order and repair. All monies so expended by the board shall be added to the selling price of such property, or balance due, and bear interest at the same rate as the original loan, or the current rate set by the board, at the board's discretion, computed annually, from the date of expending the same, and shall be repaid by the purchaser to the board on demand. The board may amortize the repayment of such expenditures or permit repayment in installments upon such terms and conditions as it deems proper. The board shall be the sole judge of the legality or validity of such taxes, assessments, charges or encumbrances and the amount of insurance to be placed upon the buildings, and other permanent improvements situated upon such property and the amount necessary to be paid for the premiums for such insurance, and the necessity and nature of the work necessary to keep the good order and repair and the amount necessary to be paid therefor.

**HISTORY: Codes, 1942, § 7524; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 14; Laws, 1948, ch. 500, § 14; Laws, 1950, ch. 465, § 14; Laws, 1987, ch. 425, § 13, eff from and after May 1, 1987.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:
"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Interest.

**1. In general.**
Where a veteran acquired a lot, then conveyed it to a builder under agreement for the builder to construct a house, not to exceed the sum of $4,000, and the house would be approved by the veterans farm and home board so that the agency may lend money, the contractor was not bound to accept as payment for the house the appraisal value which the board might place on the house. La Bella v. Baggett, 215 Miss. 101, 60 So. 2d 576, 1952 Miss. LEXIS 542 (Miss. 1952).

**2. Interest.**
Where veteran acquired lot then conveyed it to a builder under agreement for the builder to construct the house for $4,000 subject to approval of veterans farm and home board, and the chancellor found that the contractors were entitled to recover $4,000 for constructing the house, the veteran was liable for interest only from the date when the loan was approved. La Bella v. Baggett, 215 Miss. 101, 60 So. 2d 576, 1952 Miss. LEXIS 542 (Miss. 1952).

## § 35-7-35. Cancellation; foreclosure.

In event of a failure of a purchaser to comply with any of the terms of his contract, or the trust deed, provided for in this chapter, the board shall have the right at its option to cancel such contract or to cause a foreclosure thereof to be made under its deed of trust. Failure of the board to exercise any option to foreclose or to exercise any other rights under the trust deed held by it for any default on the part of the purchaser or mortgagor, shall not be deemed a waiver of its rights then or at any future time to exercise such right or rights. In the event of any sale under foreclosure as herein provided for, the board may appear at such sale and bid on said property, and may become the purchaser at such sale. Property foreclosed, repossessed or otherwise reverted to the board may be conveyed to the Veterans' Administration in the case of VA Guaranty, resold inclusive of refinancing, or otherwise disposed of to the highest financial advantage in the best judgment of the board.

**HISTORY: Codes, 1942, § 7525; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 15; Laws, 1948, ch. 500, § 15; Laws, 1950, ch. 465, § 15; Laws, 1987, ch. 425, § 14, eff from and after May 1, 1987.**

**Editor's Notes** — Laws of 1987, ch. 425, § 22, provides as follows:
"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Federal Aspects**— The laws relating to veterans are administered by the United States Department of Veterans Affairs. See 38 USCS §§ 301 et seq. Housing and small business loans for veterans, see 38 USCS §§ 3701 et seq.

## § 35-7-37. Care of property reverting to board.

The board shall have the power to insure and keep insured against fire and other hazards as the board may determine, all buildings, and other permanent improvements, or any of them, situated upon any property which has reverted to and is under the control of the board. The board shall have the power to do or cause to be done the work and supply the materials necessary to keep said buildings, fences, and other improvements situated upon such property in good order and repair. The board shall have authority to lease or let such property, in whole or in part, upon such terms as it may deem proper, and if a farm, to cultivate such farm or cause it to be cultivated, or harvest or cause to be harvested the crop or crops growing thereon.

**HISTORY: Codes, 1942, § 7526; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 16; Laws, 1948, ch. 500, § 16; Laws, 1950, ch. 465, § 16.**

## § 35-7-39. Second purchases of property for veteran.

The intent of this law is to provide a one-time benefit to the veteran, and the board shall not consider applications for the purchase of a second home as long as there are eligible veterans on the waiting list to apply for a first purchase.

If a veteran who has been the beneficiary of this chapter loses his home by fire, windstorm or other insurable hazard beyond his control and his account with the board is paid in full, the board may, in its discretion, approve the purchase of a home for such veteran, subject to all the other provisions of this chapter.

**HISTORY: Codes, 1942, § 7518; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 2; Laws, 1948, ch. 500, § 2; Laws, 1950, ch. 465, § 2; Laws, 1952, ch. 311, § 1; Laws, 1956, ch. 351; Laws, 1958, ch. 460, § 1; Laws, 1964, ch. 477; Laws, 1966, ch. 277, § 1; Laws, 1987, ch. 425, § 15, eff from and after May 1, 1987.**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

## § 35-7-41. Rights of surviving spouse.

If a veteran dies after filing his or her application for a home as provided in this chapter, and his or her application is subsequently approved, his or her unremarried spouse may, in the discretion of the board, succeed to his or her rights, privileges and benefits under this law that would have been his or hers but for his or her death. The contract or purchase which the board otherwise would or might have entered into with such veteran may be entered into with his or her unremarried spouse.

**HISTORY: Codes, 1942, § 7529; Laws, 1936, ch. 199; Laws, 1946, ch. 221, § 19; Laws, 1948, ch. 500, § 17; Laws, 1950, ch. 465, § 17; Laws, 1987, ch. 425, § 16, eff from and after May 1, 1987.**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:
"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

## § 35-7-43. Removal of disability of minority.

Any citizen of this state, over the age of 18 years and under the age of 21 years, otherwise qualified under the provisions of this chapter and desirous of obtaining the benefits of this chapter, notwithstanding such minority, shall be entitled to avail of the benefits of this chapter, and for so doing the minority of such person is hereby removed to authorize the same.

**HISTORY: Codes, 1942, § 7531.7; Laws, 1946, ch. 221, § 23; Laws, 1948, ch. 500, § 22; Laws, 1950, ch. 465, § 23.**

## § 35-7-45. Funds; sale of mortgages; issuance of notes.

(a) Any money previously appropriated to the revolving fund of the board or that may be hereinafter appropriated shall be commingled, exclusive of escrow funds provided for in Section 35-7-31, into a general revolving fund for carrying out the provisions of this chapter. The expense of administering this chapter shall be paid from the revolving fund within the limitations provided by Section 35-7-9. The revolving fund of the board will constitute a trust fund and shall be segregated from all other funds in the State Treasury. All interest earned by the State Treasury on any investment of the Veterans' Home Purchase Board Revolving Fund shall be placed to the credit of such fund. The State Fiscal Management Board is authorized and directed to draw warrants upon such funds from time to time upon requisition of the board executed by its executive officer, and the State Treasurer is hereby authorized and directed to pay such warrants.

(b) The money repaid by the purchaser shall be deposited in the board's revolving fund and shall be available under the same conditions as the original appropriation. The board shall have continuing authority to expend funds up to the maximum amount received into the special revolving fund, limited to the discretionary best judgment of the board as to reserve. The board shall submit to the State Fiscal Management Board, the Legislative Budget Office, legislative appropriation committees, and other such authority as may arise or be deemed necessary, an annual budget, using the standard general fund budget format as a model, but modified to reflect an accurate and management-oriented view of the revolving fund, and an annual report reflecting a detailed analysis of all revenue and expenditures. All funds in the revolving fund in excess of the one percent (1%) administrative expense allowance shall be expended or committed for new loans with the exception of the reserve judged necessary by the board.

(c) The board, with the advice and consent of the State Bond Commission, may also sell or hypothecate its mortgage loans to the Reconstruction Finance Corporation of the United States Government or to any subsidiary agency thereof, or to any other agency, private or public, when a sale of such mortgage loans would be to the advantage of the board. However, no mortgage loans may be sold for less than the prevailing market value, which may include sale at a discount from book value when discounted to present value to equate to market yields, of said loans as determined by the State Bond Commission. The provisions of this section may also include the discounting to present value of lower interest rate loans to the mortgagor to encourage early payoff of the loan.

(d) The board may issue its notes in such amounts and for such terms as the board may deem advisable to provide additional funds for purchase of veterans' homes, and such notes shall be eligible for purchase by any agency of the State of Mississippi. The repayment of such notes shall be guaranteed by the board, and any and all income to the board from the repayments of the principal and interest on its purchases by veterans shall be first pledged to repayment of any maturing notes. The maturity dates, denomination or amount, and rate of interest of such notes shall be determined by the board; however, such notes shall in no event exceed a term of thirty (30) years nor bear a higher rate of interest than one percent (1%) below that received by the board on its mortgages and deeds of trust. Notwithstanding any other provisions of this chapter, the board may apply the proceeds from the issuance of its notes under this section or the issuance of its bonds under any other applicable law, as follows:

(i) Refinancing of permanent mortgage loans, subject to the conditions specified in Section 35-7-17(5).

(ii) Increasing the purchase limit on homes as provided in Section 35-7-17(1).

The board shall have the authority to sell outright its mortgages and deeds of trust at market value, or discounted to present value, as hereinabove provided and to service said mortgages for the purchaser, collecting the principal and interest due the owner of such mortgages, and to charge therefor a reasonable service fee to be mutually agreed upon by the purchaser of such mortgages and the board.

Any notes issued by the board must be approved at a regular meeting of the board, upon favorable vote by a majority of four (4) members of the board, who shall authorize the chairman and the executive director of said board to issue and sign such notes as the official deed and act of the whole board.

(e) Any additional monies appropriated or obtained to extend the benefits of this chapter shall be commingled with and become an integral part of the revolving fund provided by this section, and the method of accounting therefor shall be the same as used with respect to any other monies in the revolving fund.

**HISTORY: Codes, 1942, § 7531; Laws, 1936, ch. 199; Laws, 1946, ch. 221, §§ 21, 22; Laws, 1948, ch. 500, §§ 19-21; Laws, 1950, ch. 465, §§ 19-22; Laws, 1952, ch. 311, § 2; Laws, 1956, ch. 353; Laws, 1958, ch. 460, § 7; Laws, 1962, ch. 478, § 4; Laws, 1987, ch. 425, § 17, eff from and after May 1, 1987.**

**Editor's Notes —** Section 27-104-1 provides that the term "Fiscal Management

Board" shall mean the "Department of Finance and Administration."

Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

**Cross References —** Legislative Budget Office, see § 27-103-101 et seq.

Department of Finance and Administration, see § 27-104-1 et seq.

State Bond Commission, see § 31-17-1 et seq.

**Federal Aspects—** Reconstruction Finance Corporation of the United States Government, see 5 USCS § 903 note (Reorg. Plan No. 1 of 1951, No. 2 of 1954, and No. 1 of 1957).

### JUDICIAL DECISIONS

**1. Board as arm of state.**

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

## § 35-7-47. Special consideration in event of hardship.

This law recognizes the occurrence of extreme and unusual circumstances which create hardship on veteran applicants from time to time; therefore, the board shall have the authority to waive, according to its best judgment, certain provisions, rules and criteria on a case by case basis. Any request for special consideration of hardship shall be fully documented and verified by the board, to include signed statements by the applicant, knowledgeable disinterested third parties, and investigation by an officer or employee of the board.

**HISTORY: Laws, 1987, ch. 425, § 18, eff from and after May 1, 1987.**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

## § 35-7-49. Confidentiality of information obtained in loan processing.

All personal information, including financial and credit information, provided to the board for the purpose of obtaining and servicing a loan, shall be held in strict confidence by the board, and used only by the board and its authorized employees for the purpose of processing and servicing the subject loan. Release of any information on an applicant or borrower outside of the board shall be only by proper legal subpoena or by the written consent of the individual involved. The intent is to protect the privacy of individual citizens/veterans and to provide complete candor in loan processing and related business matters. This section is not intended to apply to communication with the credit and financial community on credit evaluation and loan servicing.

Also, it is not intended to prevent the disclosure of information in the process of negotiating a settlement by a third party when a loan is in default or otherwise in violation of this law.

**HISTORY: Laws, 1987, ch. 425, § 19, eff from and after May 1, 1987.**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

## § 35-7-51. Criminal sanctions for fraudulent conduct.

Any person, seller, veteran, broker, agent, attorney or corporate officer, who shall knowingly make, utter, publish, pass or use any false, fictitious or forged paper, document, contract, affidavit, application, assignment or other instrument in writing in connection with or pertaining to any transaction under this law, shall be guilty of a felony and, upon conviction thereof, shall be subject to punishment under the laws of the State of Mississippi, and shall further forfeit any rights to the benefits of this law, and shall repay on demand any funds expended by the board on his or her behalf or otherwise outstanding to the board.

**HISTORY: Laws, 1987, ch. 425, § 20, eff from and after May 1, 1987.**

**Editor's Notes —** Laws of 1987, ch. 425, § 22, provides as follows:

"SECTION 22. The provisions of this act shall apply to matters under consideration by the board after May 1, 1987, except final applications for purchase received and in process and the closing of all loan commitments made prior to May 1, 1987."

### RESEARCH REFERENCES

**ALR.**

Admissibility, in forgery prosecution, of other acts of forgery. 34 A.L.R.2d 777.

Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.

False statement as to existing encumbrance on chattel in obtaining loan or credit as criminal false pretense. 53 A.L.R.2d 1215.

Admissibility to establish fraudulent purpose or intent, in prosecution for obtaining or attempting to obtain money or property by false pretenses, of evidence of similar attempts on other occasions. 78 A.L.R.2d 1359.

Admissibility on behalf of accused of evidence of similar acts or transactions tending to rebut fraudulent intent. 90 A.L.R.2d 903.

Admissibility, in prosecution for obtaining money or property by fraud or false pretenses, of evidence of subsequent payments made by accused to victim. 10 A.L.R.3d 572.

Spouse's acceptance or retention of benefits of other spouse's fraudulent act as ratification of transaction. 82 A.L.R.3d 625.

**Am. Jur.**

36 Am. Jur. 2d, Forgery §§ 66, 67.

37 Am. Jur. 2d, Fraud and Deceit § 50.

73 Am. Jur. 2d, Statutes §§ 185-189.

**CJS.**

37 C.J.S., Forgery § 74.

# CHAPTER 9.

# PENSIONS [REPEALED]

Sec.
35-9-1 through 35-9-35. Repealed.

## §§ 35-9-1 through 35-9-35. Repealed.

Repealed by Laws, 1992, ch. 396, § 12, eff from and after passage (approved April 27, 1992).

§ 35-9-1. [Codes, 1930, § 5807; 1942, § 7462; Laws, 1930, ch. 28; Laws, 1940, ch. 301; Laws, 1946, ch. 389, § 1; Laws, 1948, ch. 409, § 1; Laws, 1950, ch. 525; Laws, 1976, ch. 360]

§§ 35-9-3, 35-9-5. [Codes, 1930, §§ 5808-5810; 1942, §§ 7463-7465; Laws, 1930, ch. 28]

§ 35-9-7. [Codes, 1930, § 5812; 1942, § 7467; Laws, 1930, ch. 28; Laws, 1946, ch. 389, § 2]

§ 35-9-9. [Codes, 1930, § 5821; 1942, § 7482; Laws, 1930, ch. 28.]

§ 35-9-11. [Codes, 1930, §§ 5812, 5817; 1942, §§ 7467, 7478; Laws, 1930, ch. 28; Laws, 1938, ch. 360; Laws, 1946, ch. 389, § 2]

§§ 35-9-13 through 35-9-27. [Codes, 1930, §§ 5810, 5811, 5813-5815, 5819, 5820, 5822; 1942, 7465, 7466, 7468-7470, 7480, 7481, 7483; Laws, 1930, ch. 28]

§ 35-9-29. [Codes, 1930, § 5816; 1942, § 7477; Laws, 1930, ch. 28; Laws, 1968, ch. 361, § 10]

§ 35-9-31. [Codes, 1930, § 5817; 1942, § 7478; Laws, 1930, ch. 28; Laws, 1938, ch. 360]

§§ 35-9-33, 35-9-35. [Codes, 1930, §§ 5818, 5823, 5824; 1942, §§ 7479, 7484, 7485; Laws, 1930, ch. 28]

**Editor's Notes** — Former § 35-9-1 was entitled "Who is entitled to draw confederate pension funds."

Former § 35-9-3 was entitled "Pension commissioner."

Former § 35-9-5 was entitled "Application for benefits."

Former § 35-9-7 was entitled "County boards of inquiry."

Former § 35-9-9 was entitled "Oath of members of board of inquiry."

Former § 35-9-11 was entitled "Passing upon and approving of applications."

Former § 35-9-13 was entitled "List of pensioners to be published and posted."

Former § 35-9-15 was entitled "Special meeting of the board of inquiry."

Former § 35-9-17 was entitled "Striking names from rolls of those not entitled to draw pensions."

Former § 35-9-19 was entitled "Restoration of names left off rolls by mistake; unpaid warrants."

Former § 35-9-21 was entitled "Effect of pensioner's change of residence to another county in state."

Former § 35-9-23 was entitled "Effect of pensioner's change of residence out of state."

Former § 35-9-25 was entitled "Boards of inquiry are empowered to summon witnesses, administer oaths and take proof."

Former § 35-9-27 was entitled "Preparation of roll by pension commissioner."

Former § 35-9-29 was entitled "Pension distribution."

Former § 35-9-31 was entitled "Disposition of unpaid installments of deceased pensioner."

Former § 35-9-33 was entitled "Duty of clerk to make report and remittances to pension commissioner."

Former § 35-9-35 was entitled "Violations."

# TITLE 37.

# EDUCATION

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# CHAPTER 1.

# STATE BOARD OF EDUCATION

| Sec. | |
|---|---|
| 37-1-1. | Establishment; composition; qualifications, appointment, terms of office and compensation of members; meetings; officers. |
| 37-1-2. | Legislative findings and determinations; state policy. |
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## § 37-1-1. Establishment; composition; qualifications, appointment, terms of office and compensation of members; meetings; officers.

From and after July 1, 1984, there shall be a state board of education which shall manage and invest school funds according to law, formulate policies according to law for implementation by the State Department of Education and perform such other duties as may be prescribed by law. The board shall consist of nine (9) members of whom none shall be an elected official. The Governor shall appoint one (1) member who shall be a resident of the Third Supreme Court District and who shall serve an initial term of one (1) year, one (1) member who shall be a resident of the First Supreme Court District and who shall serve an initial term of five (5) years, one (1) member who shall be a resident of the Second Supreme Court District and who shall serve an initial term of nine (9) years, one (1) member who shall be employed on an active and full-time basis as a school administrator and who shall serve an initial term of three (3) years, and one (1) member who shall be employed on an active and full-time basis as a schoolteacher and who shall serve an initial term of seven (7) years. The Lieutenant Governor shall appoint two (2) members from the state at large, one (1) of whom shall serve an initial term of four (4) years and one (1) of whom shall serve an initial term of eight (8) years. The Speaker of the House of Representatives shall appoint two (2) members from the state at large, one (1) of whom shall serve an initial term of two (2) years and one (1) of whom shall serve an initial term of six (6) years. The initial terms of appointees shall begin on July 1, 1984, and all subsequent appointments shall begin on the first day of July for a term of nine (9) years and continue until their successors are appointed and qualify; however, to ensure an orderly process of transition, the initial appointments shall be made not later than March 1, 1984. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be for the unexpired term only. All members shall be appointed with the advice and consent of the Senate, and no member shall be actively engaged in the educational profession except as stated above.

The first official meeting of the original board members shall be called by the Governor as soon after July 1, 1984, as practical. The board shall elect a chairman from its membership at the first meeting of the original board members and every year thereafter. A majority of the membership of the board shall constitute a quorum for the transaction of any business. The board shall meet regularly once a month at such time as shall be designated by an order entered upon the minutes thereof. Special meetings of the board shall be held upon call of the chairman or upon the call of a majority of the members thereof. The State Superintendent of Public Education shall be the secretary of the board. The board shall hold its sessions at the seat of government, or at such location in the State of Mississippi as shall be designated by an order entered upon the minutes thereof.

Members of the board shall be reimbursed for expenses in the manner and amount specified in Section 25-3-41 and shall be entitled to receive per diem compensation as authorized in Section 25-3-69.

**HISTORY: Codes, 1930, § 6548; 1942, § 6233; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1982, Ex Sess, ch. 17, § 3; Laws, 1986, ch. 432, § 1, eff from and after July 1, 1986.**

**Editor's Notes** — Laws of 1982, Ex Sess, ch. 17, § 1, eff from and after passage (approved December 21, 1982), provides as follows:

"SECTION 1. This act shall be referred to as the 'Mississippi Education Reform Act of 1982.'"

Laws of 1984, 1st Ex Sess, ch. 10, § 8, eff from and after July 1, 1984, provides as follows:

"SECTION 8. The legislature hereby reaffirms its commitment to fully and timely fund the provisions of the Mississippi Education Reform Act of 1982, cited as Chapter 17, Laws of the Extraordinary Session of 1982."

Laws of 2011, ch. 511, § 2, effective April 26, 2011, provides:

"SECTION 2. (1) The State Board of Education, in conjunction with the Board of Trustees of State Institutions of Higher Learning and the State Board for Community and Junior Colleges, shall study and develop a comprehensive report and recommendations to the 2012 Legislature, by January 2, 2012, on the implementation, expansion and costs associated with the establishment of an Adult High School Diploma. The Chairmen of the House and Senate Education Committees, or their respective designees, and a representative appointed by the Governor, shall serve on the study panel for the development of an Adult High School Diploma.

"(2) The gubernatorial appointment to the study panel shall be made within thirty (30) days after the effective date of this act.

"(3) Legislative members of the study panel shall serve without compensation for their services, but may be reimbursed for necessary expense in attending to the actual business of the study panel from any available funds, as provided by law. Legislative members shall be reimbursed from the contingent expense fund of their respective house, but only with the specific approval of the Rules Committee of the respective house; however, no expense for attending meetings of the study panel may be paid while the Legislature is in session."

**Cross References —** Supreme Court districts defined, see § 9-3-1.

Creation and composition of the state department of education, see § 37-3-1.

State superintendent of public education and his duties generally, see §§ 37-3-9, 37-3-11.

Approval of selection for deputy superintendents, associate superintendents and directors and compensation thereof, see § 37-3-13.

Establishment of county boards of education generally, see § 37-5-1.

Powers and duties of state board of education regarding the Gifted Education Act, see §§ 37-23-177, 37-23-179.

Designation of state board of education as governing body of Mississippi School for Math and Science, and the duties of the board with respect thereto, see § 37-139-1 et seq.

Preparation of energy management plans, see § 57-39-101 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 176-186.

**Practice References.**
Education Law (Matthew Bender).

## § 37-1-2. Legislative findings and determinations; state policy.

The legislature finds and determines that the quality of public education and its effect upon the social, cultural and economic enhancement of the people of Mississippi is a matter of public policy, the object of which is the education and performance of its children and youth. The legislature hereby declares the following to be the policy of the State of Mississippi:

(a) That the students, parents, general citizenry, local schoolteachers and administrators, local governments, local school boards, and state government have a joint and shared responsibility for the quality of education delivered through the public education system in the State of Mississippi;

(b) To produce a functionally literate school population;

(c) To ensure that all students master the most essential parts of a basic education;

(d) To establish, raise and maintain educational standards;

(e) To improve the quality of education by strengthening it and elevating its goals;

(f) To provide quality education for all school-age children in the state;

(g) That excellence and high achievement of all students should be the ultimate goal;

(h) To encourage the common efforts of students, parents, teachers, administrators and business and professional leaders for the establishment of specific goals for performance;

(i) To improve instructional and administrative quality, to relate the education community to other policymakers, to achieve increased competency among students, teachers and administrators, to provide for continuing professional development for teachers, counselors and administrators, to assure that the budget process, the planning function and the allocation of personnel of the state department of education are commensurate with its educational goals;

(j) That the return on public education which is the single largest investment for the state be the effectiveness of the delivery system and the product it is designed to produce;

(k) That the investment in public education can be justified on the basis of the economic benefits that will accrue both to the individual and to society, recognizing that the return on such investment is long term and dramatic progress is not immediate;

(*l*) That emphasis must be placed upon early mastery of the skills necessary to success in school and that quality, performance-based early childhood education programs are an essential element of a comprehensive education system;

(m) That local school districts and their public schools be required to account for the product of their efforts;

(n) That the children of this state receive a period of instruction sufficient to train each in the basic educational skills adequate for the student to take his or her place in society and make a contribution as a citizen of this state, and that all children be encouraged to continue their education until they have completed high school;

(o) To establish an accreditation system based upon measurable elements in school known to be related to instructional effectiveness, to establish a credible process for measuring and rating schools, to establish a method for monitoring continued performance, and to provide for a state response when performance is inadequate;

(p) That the teachers of this state, to the extent possible, receive salaries that are at least equal to the average of the salaries received by teachers in the southeastern United States.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 2, eff from and after passage (approved December 21, 1982).**

**Editor's Notes —** Laws of 1984, 1st Ex Sess, ch 10, § 8 eff from and after July 1, 1984, provides as follows:

"SECTION 8. The legislature hereby reaffirms its commitment to fully and timely fund the provisions of the Mississippi Education Reform Act of 1982, cited as Chapter 17, Laws of the Extraordinary Session of 1982."

**Cross References —** Power of state board of education to implement policies under this section, see § 37-1-3.

## JUDICIAL DECISIONS

**1. In general.**

Intent of state legislature, expressed in § 37-1-2(p), that teachers of state, to extent possible, receive salaries received by teachers in southeastern United States, does not and cannot be interpreted as creating property interest vesting in Mississippi teachers, falling under protection of Fourteenth Amendment's due process clause; accordingly, federal civil rights action brought by teachers to require state officials to implement salary increase is barred by sovereign immunity. Mohler v. Mississippi, 782 F.2d 1291, 1986 U.S. App. LEXIS 22325 (5th Cir. Miss. 1986).

## OPINIONS OF THE ATTORNEY GENERAL

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

## RESEARCH REFERENCES

**Law Reviews.**

Development of Educational Policy in Mississippi. 58 Miss. L. J. 223, Fall, 1988.

## § 37-1-3. Adoption of rules and regulations; budget; central management; educational improvement program; curriculum and course of study; objectives for instruction in personal money management skills; authority to expend available federal funds for training expenses and salary incentives for licensed teachers.

(1) The State Board of Education shall adopt rules and regulations and set standards and policies for the organization, operation, management, planning, budgeting and programs of the State Department of Education.

(a) The board is directed to identify all functions of the department that contribute to or comprise a part of the state system of educational accountability and to establish and maintain within the department the necessary organizational structure, policies and procedures for effectively coordinating such functions. Such policies and procedures shall clearly fix and delineate responsibilities for various aspects of the system and for overall coordination of the total system and its effective management.

(b) The board shall establish and maintain a system-wide plan of performance, policy and directions of public education not otherwise provided for.

(c) The board shall effectively use the personnel and resources of the department to enhance technical assistance to school districts in instruction and management therein.

(d) The board shall establish and maintain a central budget policy.

(e) The board shall establish and maintain within the State Department of Education a central management capacity under the direction of the State Superintendent of Public Education.

(f) The board, with recommendations from the superintendent, shall design and maintain a five-year plan and program for educational improvement that shall set forth objectives for system performance and development and be the basis for budget requests and legislative initiatives.

(2)(a) The State Board of Education shall adopt and maintain a curriculum and a course of study to be used in the public school districts that is designed to prepare the state's children and youth to be productive, informed, creative citizens, workers and leaders, and it shall regulate all matters arising in the practical administration of the school system not otherwise provided for.

(b) Before the 1999-2000 school year, the State Board of Education shall develop personal living and finances objectives that focus on money management skills for individuals and families for appropriate, existing courses at the secondary level. The objectives must require the teaching of those skills necessary to handle personal business and finances and must include instruction in the following:

(i) Opening a bank account and assessing the quality of a bank's services;

(ii) Balancing a checkbook;

(iii) Managing debt, including retail and credit card debt;

(iv) Completing a loan application;

(v) The implications of an inheritance;

(vi) The basics of personal insurance policies;

(vii) Consumer rights and responsibilities;

(viii) Dealing with salesmen and merchants;

(ix) Computing state and federal income taxes;

(x) Local tax assessments;

(xi) Computing interest rates by various mechanisms;

(xii) Understanding simple contracts; and

(xiii) Contesting an incorrect billing statement.

(3) The State Board of Education shall have authority to expend any available federal funds, or any other funds expressly designated, to pay training, educational expenses, salary incentives and salary supplements to licensed teachers employed in local school districts or schools administered by the State Board of Education. Such incentive payments shall not be considered part of a school district's local supplement as defined in Section 37-151-5(o), nor shall the incentives be considered part of the local supplement paid to an individual teacher for the purposes of Section 37-19-7(1). MAEP funds or any other state funds shall not be used to provide such incentives unless specifically authorized by law.

(4) The State Board of Education shall through its actions seek to implement the policies set forth in Section 37-1-2.

**HISTORY: Codes, 1930, § 6553; 1942, § 6238; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1982, Ex Sess, ch. 17, § 5; Laws, 1999, ch. 360, § 1; Laws, 2005, ch. 356, § 1; Laws, 2013, ch. 497, § 36, eff from and after July 1, 2013.**

**Cross References —** Paperwork reduction and preservation of classroom instructional time, see § 37-1-11.

Issuance of regulations relating to the use of relocatable classrooms, see § 37-1-13.

Duty of the state department of education to execute laws relating to administrative, supervisory, and consultative services to state public schools, see § 37-3-5.

State Superintendent of public education and his duties generally, see §§ 37-3-9, 37-3-11.

Mississippi Uniform School Laws, see § 37-6-1 et seq.

Maintenance of uniform system of free public schools, see § 37-13-1.

Appointment of curriculum committee by the state board of education, see § 37-13-9.

Duty of the state department of education relative to program of education for exceptional children, see § 37-23-5.

Duty of the state board of education to promulgate rules and regulations relative to transportation of school children, see § 37-41-1.

Assumption of authority and duties of State Textbook Procurement Commission by State Board of Education, see § 37-43-2.

Designation of state board of education as governing body of Mississippi School for Math and Science, and the duties of the board with respect thereto, see § 37-139-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 84.

**CJS.**

78 C.J.S., Schools and School Districts §§ 188, 191–203.

**Law Reviews.**

"Train Up a Child in the Way He Should Go": State regulation of Private Religious Education. 9 Miss. C. L. Rev. 101 (1989).

## § 37-1-4. Transition.

In order to provide for an orderly transition following its appointment, the state board of education as it will exist on and after July 1, 1984, shall meet with and receive the cooperation of the state superintendent of public education and the state department of education on any matters relating to the public school education system in the state until assuming its duties and authority on July 1, 1984. During this transition period, said state board of education shall formulate and adopt rules and regulations in accordance with Section 25-43-1.101 et seq., and formulate standards and priorities necessary for the orderly administration of the public education system of the state. Such rules, regulations, standards and priorities shall become effective on July 1, 1984. The board shall also require data and information on program performance from any source relating to the public school system. The state department of education shall assist the board in assuming its duties and shall provide any technical assistance as may be required. The state department of education, from any funds appropriated thereto, shall, upon the request of the board, timely pay, with the approval of the commission of budget and accounting, all sums reasonably required for the operation of the board, including per diem and actual expenses of the board, and the implementation of Chapter 17, Laws of the First Extraordinary Session of 1982, through June 30, 1984.

**Joint Legislative Committee Note.--** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by substituting "Section 25-43-1.101 et seq." for "Section 25-43-1 et seq." The Joint Committee ratified the correction at its August 12, 2019, meeting.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 4, eff from and after passage (approved December 21, 1982).**

### § 37-1-5. Decision of appeals from county superintendents and state superintendent.

(1) The State Board of Education shall decide all appeals from the decisions of the county superintendents or from the decisions of the state superintendent, as authorized by statute. All matters relating to appeals shall be presented in writing, and the decision of the board shall be final.

(2) The State Board of Education shall adopt procedures for conducting any such appeals as are authorized by statute. Such procedures shall include notification of the time and place of any hearing requested by the appealing party. Any such hearing shall be conducted by a hearing officer designated by the State Board of Education. At such hearing, the hearing officer and any person affected by the appeal may conduct reasonable questioning of persons who make relevant factual allegations concerning the appeal. The hearing officer shall require that all persons be sworn before they may offer any testimony at the hearing, and the hearing officer is authorized to administer oaths. Any person so choosing may be represented by counsel at the hearing. A record of the hearing shall be made, which shall consist of a transcript of all testimony received, all documents and other material introduced by any interested person, and such other material as the hearing officer considers relevant, including his own recommendation, which he shall make within a reasonable period of time after the hearing is closed and after he has had an opportunity to review, study and analyze the evidence presented during the hearing. The completed record shall be certified to the State Board of Education, which shall consider only the record in making its decision, and shall not consider any evidence or material which is not included therein. The State Board of Education shall make its written findings and issue its order after reviewing said record.

**HISTORY: Codes, 1930, § 6549; 1942, § 6234; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1992, ch. 524, § 1, eff from and after July 1, 1992.**

RESEARCH REFERENCES

**CJS.**
78 C.J.S., Schools and School Districts §§ 206–214, 219–227.

## § 37-1-7. Grounds and procedure for removal of county superintendent.

For continued neglect of duty, drunkenness, incompetency or official misconduct, the state board of education may remove a county superintendent. However, before the removal, the officer shall have ten (10) days' notice of the charge, and shall be allowed opportunity to make defense.

**HISTORY: Codes, 1930, § 6550; 1942, § 6235; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

**Cross References —** County Superintendents generally, see § 37-5-61 et seq.
Filling of vacancy in office of County Superintendent, see § 37-5-75.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 76.

**CJS.**
78 C.J.S., Schools and School Districts §§ 215, 216, 237–250, 774, et seq.

## § 37-1-9. Administration of oaths of Mississippi Board of Education; examination of witnesses by board; investigative reports exempt from provisions of Mississippi Public Records Act.

(1)(a) The Mississippi Board of Education, acting by and through its chairman or executive secretary, is authorized to administer oaths, to take or cause depositions to be taken, to subpoena persons and to issue a subpoena to compel production of books, papers, records and other documents. The board shall have the powers of a court to compel witnesses to attend and testify in all matters of investigation by the board.

(b) For noncompliance with a subpoena, the board may apply to the circuit court for an order requiring the person subpoenaed to appear before the board and to testify and produce books, papers, records and documents if so ordered. Failure to obey the order of the court may be punished as contempt.

(2)(a) In addition to the exemptions from public access provided in Section 37-11-51, investigative reports shall be exempt from the provisions of the Mississippi Public Records Act of 1983, but the board may choose to make public all or any part of an investigative report.

(b) For the purposes of this subsection (2), "investigative report" includes documentation on which it is based and means records that are compiled by the board, the Department of Education, the Commission on Teacher and Administrator Education, Certification and Licensure and Development, or the Accreditation Commission in the process of investigating alleged misconduct that could result in disciplinary action, the disclosure of which would impede, harm or jeopardize the investigation, or that would: (i) reveal the identity of informants or witnesses; (ii) deprive a person of a right to a fair trial or an impartial adjudication; or (iii) endanger the life or safety of a public official or employee or confidential informants or witnesses.

**HISTORY: Codes, 1930, § 6550; 1942, § 6235; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 2015, ch. 470, § 1, eff from and after passage (approved Apr. 22, 2015).**

### § 37-1-11. Duties of State Department of Education and local boards as to preservation of classroom instructional time and paperwork reduction.

(1) The school day shall be preserved for the purpose of teaching. It is the intent of the Legislature that every effort be made by the State Department of Education and the local school boards to protect the instructional time in the classroom and to reduce the amount of paperwork which must be completed by teachers.

(2) The State Board of Education shall adopt rules that provide for simplifying and reducing the number and length of written reports and other written documents that the State Department of Education requires from school districts and school district employees. The board shall conduct a comprehensive review of its rules to simplify and to reduce the number and length of reports required from school districts and school district employees. The State Department of Education shall provide nonmandatory models to school districts of lesson plans, curriculum guides and other required reports that comply with department reporting requirements.

(3) The State Board of Education and the school board of each school district shall adopt policies to limit and reduce the number and length of written reports that classroom teachers are required to prepare.

**HISTORY: Laws, 1987, ch. 375; Laws, 2011, ch. 442, § 7, eff from and after July 1, 2011.**

**Cross References —** Administration of programs of state department of education, see § 37-1-3.

State Department of Education generally, see § 37-3-1 et seq.

### § 37-1-12. Development and promulgation of regulations for annual reports from school districts and State Department of Education to Legislature.

The State Board of Education shall develop and promulgate regulations for annual reports from school districts and from the State Department of

Education to the Legislature. Such regulations shall eliminate duplication, make effective use of technology and enable the Legislature to monitor education in Mississippi. These regulations may include methods to reduce redundant reporting requirements and eliminate inadequate performance measures, and the State Board of Education may include any proposed legislative amendments to state law necessary to improve statewide reporting mandates.

**HISTORY: Laws, 2011, ch. 442, § 1; Laws, 2013, ch. 497, § 37, eff from and after July 1, 2013.**

## § 37-1-13. Purchase and use of relocatable classrooms.

(1) The State Board of Education shall issue regulations:

(a) Setting minimum specifications for relocatable classrooms for the public school districts;

(b) Approving or disapproving plans for relocatable classrooms for public school districts;

(c) Providing a system of requiring local school districts to receive State Department of Education approval before purchase of such relocatable classrooms.

(2) The State Department of Education may, in its discretion, inspect the facilities of any manufacturer of relocatable classrooms for the purpose of determining if State Department of Education minimum specifications are being met.

(3) The State Department of Education shall insure that local school districts advertise for and receive bids as required by state law for purchase of relocatable classrooms. The State Department of Education shall approve plans for relocatable classrooms by persons, firms, corporations or associations permitted to submit bids for consideration, before such bids are submitted to local school districts. The State Department of Education shall have the right to reject any and all relocatable classroom plans submitted. Bids may not be submitted to local school districts, unless persons, firms, corporations or associations have State Department of Education approval.

**HISTORY: Laws, 1990, ch. 535, § 3; Laws, 2013, ch. 497, § 38, eff from and after July 1, 2013.**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Purchase of relocatable classrooms by local school boards, see § 37-7-301.

Sale or lease of relocatable classrooms by one school district to another, see § 37-7-471.

# CHAPTER 3.

# STATE DEPARTMENT OF EDUCATION

Sec.
37-3-1. Organization of state department of education.
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37-3-29. Repealed.
37-3-31. Repealed.
37-3-33 through 37-3-37. Repealed.
37-3-39. Custody and disbursement of funds of department.
37-3-41. Repealed.
37-3-43. Repealed.
37-3-46. Assistance to certain local schools or school districts to establish program of educational accountability and assessment of performance; personnel appraisal and compensation system for school employees; programs to prevent dropouts.
37-3-47. Repealed.
37-3-48. Repealed.
37-3-49. Adoption by school district of instructional program and management system; paperwork reduction; exemption of certain district.
37-3-51. Notification of Department of Education of conviction of licensed person of certain felonies or sex offenses.
37-3-53. "Mississippi Report Card" on performance of students, public schools and charter schools.
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37-3-57. Repealed.
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37-3-61. Alliance for Families programs; authorization; objectives.

Sec.
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37-3-89. School discipline and classroom management courses; requirement; approval.
37-3-91. Regional behavioral institutes; discipline and classroom management strategies; participation; standardized Memorandum of Understanding between mental health facilities and school districts to include referral protocols and standardized behavioral health screening.
37-3-93. School Crisis Management Program; quick response teams; toll-free telephone service for reporting school violence; certified threat assessment officers and duties thereof.
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37-3-101. Local school districts to adopt policy on student suicide prevention and provide in-service training on suicide prevention education for all school district employees.
37-3-103. In-service training on suicide prevention education for newly employed school district employees.
37-3-105. In-service training for all licensed grades K through 3 public school district teachers to include intensive, comprehensive, research-based reading methods.
37-3-107. Curriculum guidelines for implementation of school bus safety curriculum for grades K through 3.

## § 37-3-1. Organization of state department of education.

(1) Until July 1, 1983, there shall be a state department of education,

which shall consist of a state superintendent of public education, an assistant state superintendent of public education, a director of the division of finance and administration, a director of the division of instruction, a director of the division of school building and transportation services, a director of vocational education, a director of the division of vocational rehabilitation, a director of the division of junior colleges, and such supervisors, assistants or employees as may be necessary for the proper functioning of the above-named divisions.

(2) From and after July 1, 1983, and until July 1, 1984, there shall be a state department of education, which shall consist of a state superintendent of public education, a director of the division of finance and administration, a director of the division of instruction, a director of the division of school building and transportation services, a director of the division of vocational and technical education, who shall be an associate state superintendent of public education, the director of the division of vocational rehabilitation, a director of the division of junior colleges and such supervisors, assistants or employees as may be necessary for the proper functioning of the above-named divisions.

(3) From and after July 1, 1984, there shall be a state department of education which shall be under the direction and supervision of the state superintendent of public education. The state department of education shall be organized into functional divisions as established by the state board of education, including any divisions established by law and prescribing the duties of the directors of such divisions.

**HISTORY: Codes, 1942, § 6245-01; Laws, 1946, ch. 297, § 1; Laws, 1970, ch. 363, § 1; Laws, 1982, ch. 493, § 8; Laws, 1982, Ex Sess, ch. 17, § 6, eff from and after passage (approved December 21, 1982).**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws, 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References** — Composition of the state board of education, see § 37-1-1.

State Department of Education authorized to establish office of career education, see § 37-13-58.

Office of Compulsory Student Attendance Enforcement, see § 37-13-81 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 176-186.

**Practice References.**
Education Law (Matthew Bender).

## § 37-3-2. Certification of teachers and administrators.

(1) There is established within the State Department of Education the Commission on Teacher and Administrator Education, Certification and Licensure and Development. It shall be the purpose and duty of the commission

to make recommendations to the State Board of Education regarding standards for the certification and licensure and continuing professional development of those who teach or perform tasks of an educational nature in the public schools of Mississippi.

(2)(a) The commission shall be composed of fifteen (15) qualified members. The membership of the commission shall be composed of the following members to be appointed, three (3) from each of the four (4) congressional districts, as such districts existed on January 1, 2011, in accordance with the population calculations determined by the 2010 federal decennial census, including: four (4) classroom teachers; three (3) school administrators; one (1) representative of schools of education of public institutions of higher learning located within the state to be recommended by the Board of Trustees of State Institutions of Higher Learning; one (1) representative from the schools of education of independent institutions of higher learning to be recommended by the Board of the Mississippi Association of Independent Colleges; one (1) representative from public community and junior colleges located within the state to be recommended by the Mississippi Community College Board; one (1) local school board member; and four (4) laypersons. Three (3) members of the commission, at the sole discretion of the State Board of Education, shall be appointed from the state at large.

(b) All appointments shall be made by the State Board of Education after consultation with the State Superintendent of Public Education. The first appointments by the State Board of Education shall be made as follows: five (5) members shall be appointed for a term of one (1) year; five (5) members shall be appointed for a term of two (2) years; and five (5) members shall be appointed for a term of three (3) years. Thereafter, all members shall be appointed for a term of four (4) years.

(3) The State Board of Education when making appointments shall designate a chairman. The commission shall meet at least once every two (2) months or more often if needed. Members of the commission shall be compensated at a rate of per diem as authorized by Section 25-3-69 and be reimbursed for actual and necessary expenses as authorized by Section 25-3-41.

(4)(a) An appropriate staff member of the State Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve as executive secretary and coordinator for the commission. No less than two (2) other appropriate staff members of the State Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve on the staff of the commission.

(b) An Office of Educator Misconduct Evaluations shall be established within the State Department of Education to assist the commission in responding to infractions and violations, and in conducting hearings and enforcing the provisions of subsections (11), (12), (13), (14) and (15) of this section, and violations of the Mississippi Educator Code of Ethics.

(5) It shall be the duty of the commission to:

(a) Set standards and criteria, subject to the approval of the State Board of Education, for all educator preparation programs in the state;

(b) Recommend to the State Board of Education each year approval or disapproval of each educator preparation program in the state, subject to a process and schedule determined by the State Board of Education;

(c) Establish, subject to the approval of the State Board of Education, standards for initial teacher certification and licensure in all fields;

(d) Establish, subject to the approval of the State Board of Education, standards for the renewal of teacher licenses in all fields;

(e) Review and evaluate objective measures of teacher performance, such as test scores, which may form part of the licensure process, and to make recommendations for their use;

(f) Review all existing requirements for certification and licensure;

(g) Consult with groups whose work may be affected by the commission's decisions;

(h) Prepare reports from time to time on current practices and issues in the general area of teacher education and certification and licensure;

(i) Hold hearings concerning standards for teachers' and administrators' education and certification and licensure with approval of the State Board of Education;

(j) Hire expert consultants with approval of the State Board of Education;

(k) Set up ad hoc committees to advise on specific areas; and

(*l*) Perform such other functions as may fall within their general charge and which may be delegated to them by the State Board of Education.

(6)(a) **Standard License — Approved Program Route.** An educator entering the school system of Mississippi for the first time and meeting all requirements as established by the State Board of Education shall be granted a standard five-year license. Persons who possess two (2) years of classroom experience as an assistant teacher or who have taught for one (1) year in an accredited public or private school shall be allowed to fulfill student teaching requirements under the supervision of a qualified participating teacher approved by an accredited college of education. The local school district in which the assistant teacher is employed shall compensate such assistant teachers at the required salary level during the period of time such individual is completing student teaching requirements. Applicants for a standard license shall submit to the department:

(i) An application on a department form;

(ii) An official transcript of completion of a teacher education program approved by the department or a nationally accredited program, subject to the following: Licensure to teach in Mississippi prekindergarten through kindergarten classrooms shall require completion of a teacher education program or a Bachelor of Science degree with child development emphasis from a program accredited by the American Association of Family and Consumer Sciences (AAFCS) or by the National Association for Education of Young Children (NAEYC) or by the National Council for Accreditation of Teacher Education (NCATE). Licensure to teach in Mississippi kindergarten, for those applicants who have completed a teacher education program, and in Grade 1 through Grade 4 shall require the completion of an interdisciplinary program of studies. Licenses for Grades 4 through 8 shall require the completion of an interdisciplinary program of studies with two (2) or more areas of concentration. Licensure to teach in Mississippi Grades 7 through 12 shall require a major in an academic field other than education, or a combination of disciplines other than education. Students preparing to teach a subject shall complete a major in the respective subject discipline. All applicants for standard licensure shall demonstrate that such person's college preparation in those fields was in accordance with the standards set forth by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) or, for those applicants who have a Bachelor of Science degree with child development emphasis, the American Association of Family and Consumer Sciences (AAFCS). Effective July 1, 2016, for initial elementary education licensure, a teacher candidate must earn a passing score on a rigorous test of scientifically research-based reading instruction and intervention and data-based decision-making principles as approved by the State Board of Education;

(iii) A copy of test scores evidencing satisfactory completion of nationally administered examinations of achievement, such as the Educational Testing Service's teacher testing examinations;

(iv) Any other document required by the State Board of Education; and

(v) From and after September 30, 2015, no teacher candidate shall be licensed to teach in Mississippi who did not meet the following criteria for entrance into an approved teacher education program:

1. Twenty-one (21) ACT equivalent or achieve the nationally recommended passing score on the Praxis Core Academic Skills for Educators examination; and

2. No less than 2.75 GPA on pre-major coursework of the institution's approved teacher education program provided that the accepted cohort of candidates meets or exceeds a 3.0 GPA on pre-major coursework.

(b) **Standard License — Nontraditional Teaching Route.** From and after September 30, 2015, no teacher candidate shall be licensed to teach in Mississippi under the alternate route who did not meet the following criteria:

(i) Twenty-one (21) ACT equivalent or achieve the nationally recommended passing score on the Praxis Core Academic Skills for Educators examination; and

(ii) No less than 2.75 GPA on content coursework in the requested area of certification or passing Praxis II scores at or above the national recommended score provided that the accepted cohort of candidates of the institution's teacher education program meets or exceeds a 3.0 GPA on pre-major coursework.

Beginning January 1, 2004, an individual who has a passing score on the Praxis I Basic Skills and Praxis II Specialty Area Test in the requested area of endorsement may apply for the Teach Mississippi Institute (TMI) program to teach students in Grades 7 through 12 if the individual meets the requirements of this paragraph (b). The State Board of Education shall adopt rules requiring that teacher preparation institutions which provide the Teach Mississippi Institute (TMI) program for the preparation of nontraditional teachers shall meet the standards and comply with the provisions of this paragraph.

(i) The Teach Mississippi Institute (TMI) shall include an intensive eight-week, nine-semester-hour summer program or a curriculum of study in which the student matriculates in the fall or spring semester, which shall include, but not be limited to, instruction in education, effective teaching strategies, classroom management, state curriculum requirements, planning and instruction, instructional methods and pedagogy, using test results to improve instruction, and a one (1) semester three-hour supervised internship to be completed while the teacher is employed as a full-time teacher intern in a local school district. The TMI shall be implemented on a pilot program basis, with courses to be offered at up to four (4) locations in the state, with one (1) TMI site to be located in each of the three (3) Mississippi Supreme Court districts.

(ii) The school sponsoring the teacher intern shall enter into a written agreement with the institution providing the Teach Mississippi Institute (TMI) program, under terms and conditions as agreed upon by the contracting parties, providing that the school district shall provide teacher interns seeking a nontraditional provisional teaching license with a one-year classroom teaching experience. The teacher intern shall successfully complete the one (1) semester three-hour intensive internship in the school district during the semester immediately following successful completion of the TMI and prior to the end of the one-year classroom teaching experience.

(iii) Upon completion of the nine-semester-hour TMI or the fall or spring semester option, the individual shall submit his transcript to the commission for provisional licensure of the intern teacher, and the intern teacher shall be issued a provisional teaching license by the commission, which will allow the individual to legally serve as a teacher while the person completes a nontraditional teacher preparation internship program.

(iv) During the semester of internship in the school district, the teacher preparation institution shall monitor the performance of the intern teacher. The school district that employs the provisional teacher shall supervise the provisional teacher during the teacher's intern year of employment under a nontraditional provisional license, and shall, in consultation with the teacher intern's mentor at the school district of employment, submit to the commission a comprehensive evaluation of the teacher's performance sixty (60) days prior to the expiration of the nontraditional provisional license. If the comprehensive evaluation establishes that the provisional teacher intern's performance fails to meet the standards of the approved nontraditional teacher preparation internship program, the individual shall not be approved for a standard license.

(v) An individual issued a provisional teaching license under this nontraditional route shall successfully complete, at a minimum, a one-year beginning teacher mentoring and induction program administered by the employing school district with the assistance of the State Department of Education.

(vi) Upon successful completion of the TMI and the internship provisional license period, applicants for a Standard License – Nontraditional Route shall submit to the commission a transcript of successful completion of the twelve (12) semester hours required in the internship program, and the employing school district shall submit to the commission a recommendation for standard licensure of the intern. If the school district recommends licensure, the applicant shall be issued a Standard License – Nontraditional Route which shall be valid for a five-year period and be renewable.

(vii) At the discretion of the teacher preparation institution, the individual shall be allowed to credit the twelve (12) semester hours earned in the nontraditional teacher internship program toward the graduate hours required for a Master of Arts in Teacher (MAT) Degree.

(viii) The local school district in which the nontraditional teacher intern or provisional licensee is employed shall compensate such teacher interns at Step 1 of the required salary level during the period of time such individual is completing teacher internship requirements and shall compensate such Standard License – Nontraditional Route teachers at Step 3 of the required salary level when they complete license requirements.

Implementation of the TMI program provided for under this paragraph (b) shall be contingent upon the availability of funds appropriated specifically for such purpose by the Legislature. Such implementation of the TMI program may not be deemed to prohibit the State Board of Education from developing and implementing additional alternative route teacher licensure programs, as deemed appropriate by the board. The emergency certification program in effect prior to July 1, 2002, shall remain in effect.

A Standard License – Approved Program Route shall be issued for a five-year period, and may be renewed. Recognizing teaching as a profession, a hiring preference shall be granted to persons holding a Standard License – Approved Program Route or Standard License – Nontraditional Teaching Route over persons holding any other license.

(c) **Special License — Expert Citizen.** In order to allow a school district to offer specialized or technical courses, the State Department of Education, in accordance with rules and regulations established by the State Board of Education, may grant a one-year expert citizen-teacher license to local business or other professional personnel to teach in a public school or nonpublic school accredited or approved by the state. Such person may begin teaching upon his employment by the local school board and licensure by the Mississippi Department of Education. The board shall adopt rules and regulations to administer the expert citizen-teacher license. A Special License – Expert Citizen may be renewed in accordance with the established rules and regulations of the State Department of Education.

(d) **Special License — Nonrenewable.** The State Board of Education is authorized to establish rules and regulations to allow those educators not meeting requirements in paragraph (a), (b) or (c) of this subsection (6) to be licensed for a period of not more than three (3) years, except by special approval of the State Board of Education.

(e) **Nonlicensed Teaching Personnel.** A nonlicensed person may teach for a maximum of three (3) periods per teaching day in a public school district or a nonpublic school accredited/approved by the state. Such person shall submit to the department a transcript or record of his education and experience which substantiates his preparation for the subject to be taught and shall meet other qualifications specified by the commission and approved by the State Board of Education. In no case shall any local school board hire nonlicensed personnel as authorized under this paragraph in excess of five percent (5%) of the total number of licensed personnel in any single school.

(f) **Special License — Transitional Bilingual Education.** Beginning July 1, 2003, the commission shall grant special licenses to teachers of transitional bilingual education who possess such qualifications as are prescribed in this section. Teachers of transitional bilingual education shall be compensated by local school boards at not less than one (1) step on the regular salary schedule applicable to permanent teachers licensed under this section. The commission shall grant special licenses to teachers of transitional bilingual education who present the commission with satisfactory evidence that they (i) possess a speaking and reading ability in a language, other than English, in which bilingual education is offered and communicative skills in English; (ii) are in good health and sound moral character; (iii) possess a bachelor's degree or an associate's degree in teacher education from an accredited institution of higher education; (iv) meet such requirements as to courses of study, semester hours therein, experience and training as may be required by the commission; and (v) are legally present in the United States and possess legal authorization for employment. A teacher of transitional bilingual education serving under a special license shall be under an exemption from standard licensure if he achieves the requisite qualifications therefor. Two (2) years of service by a teacher of transitional bilingual education under such an exemption shall be credited to the teacher in acquiring a Standard Educator License. Nothing in this paragraph shall be deemed to prohibit a local school board from employing a teacher licensed in an appropriate field as approved by the State Department of Education to teach in a program in transitional bilingual education.

(g) In the event any school district meets the highest accreditation standards as defined by the State Board of Education in the accountability system, the State Board of Education, in its discretion, may exempt such school district from any restrictions in paragraph (e) relating to the employment of nonlicensed teaching personnel.

(h) **Highly Qualified Teachers.** Beginning July 1, 2006, any teacher from any state meeting the federal definition of highly qualified, as described in the No Child Left Behind Act, must be granted a standard five-year license by the State Department of Education.

(7) **Administrator License.** The State Board of Education is authorized to establish rules and regulations and to administer the licensure process of the school administrators in the State of Mississippi. There will be four (4) categories of administrator licensure with exceptions only through special approval of the State Board of Education.

(a) **Administrator License — Nonpracticing.** Those educators holding administrative endorsement but having no administrative experience or not serving in an administrative position on January 15, 1997.

(b) **Administrator License — Entry Level.** Those educators holding administrative endorsement and having met the department's qualifications to be eligible for employment in a Mississippi school district. Administrator License - Entry Level shall be issued for a five-year period and shall be nonrenewable.

(c) **Standard Administrator License — Career Level.** An administrator who has met all the requirements of the department for standard administrator licensure.

(d) **Administrator License — Nontraditional Route.** The board may establish a nontraditional route for licensing administrative personnel. Such nontraditional route for administrative licensure shall be available for persons holding, but not limited to, a master of business administration degree, a master of public administration degree, a master of public planning and policy degree or a doctor of jurisprudence degree from an accredited college or university, with five (5) years of administrative or supervisory experience. Successful completion of the requirements of alternate route licensure for administrators shall qualify the person for a standard administrator license.

Individuals seeking school administrator licensure under paragraph (b), (c) or (d) shall successfully complete a training program and an assessment process prescribed by the State Board of Education. All applicants for school administrator licensure shall meet all requirements prescribed by the department under paragraph (b), (c) or (d), and the cost of the assessment process required shall be paid by the applicant.

(8) **Reciprocity.**

(a) The department shall grant a standard license to any individual who possesses a valid standard license from another state and meets minimum Mississippi license requirements or equivalent requirements as determined by the State Board of Education. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(b) The department shall grant a nonrenewable special license to any individual who possesses a credential which is less than a standard license or certification from another state. Such special license shall be valid for the current school year plus one (1) additional school year to expire on June 30 of the second year, not to exceed a total period of twenty-four (24) months, during which time the applicant shall be required to complete the requirements for a standard license in Mississippi.

(9) **Renewal and Reinstatement of Licenses.** The State Board of Education is authorized to establish rules and regulations for the renewal and reinstatement of educator and administrator licenses. Effective May 15, 1997, the valid standard license held by an educator shall be extended five (5) years beyond the expiration date of the license in order to afford the educator adequate time to fulfill new renewal requirements established pursuant to this subsection. An educator completing a master of education, educational specialist or doctor of education degree in May 1997 for the purpose of upgrading the educator's license to a higher class shall be given this extension of five (5) years plus five (5) additional years for completion of a higher degree.

(10) All controversies involving the issuance, revocation, suspension or any change whatsoever in the licensure of an educator required to hold a license shall be initially heard in a hearing de novo, by the commission or by a subcommittee established by the commission and composed of commission members, or by a hearing officer retained and appointed by the commission, for the purpose of holding hearings. Any complaint seeking the denial of issuance, revocation or suspension of a license shall be by sworn affidavit filed with the Commission on Teacher and Administrator Education, Certification and Licensure and Development. The decision thereon by the commission, its subcommittee or hearing officer, shall be final, unless the aggrieved party shall appeal to the State Board of Education, within ten (10) days, of the decision of the commission, its subcommittee or hearing officer. An appeal to the State Board of Education shall be perfected upon filing a notice of the appeal and by the prepayment of the costs of the preparation of the record of proceedings by the commission, its subcommittee or hearing officer. An appeal shall be on the record previously made before the commission, its subcommittee or hearing officer, unless otherwise provided by rules and regulations adopted by the board. The decision of the commission, its subcommittee or hearing officer shall not be disturbed on appeal if supported by substantial evidence, was not arbitrary or capricious, within the authority of the commission, and did not violate some statutory or constitutional right. The State Board of Education in its authority may reverse, or remand with instructions, the decision of the commission, its subcommittee or hearing officer. The decision of the State Board of Education shall be final.

(11)(a) The State Board of Education, acting through the commission, may deny an application for any teacher or administrator license for one or more of the following:

(i) Lack of qualifications which are prescribed by law or regulations adopted by the State Board of Education;

(ii) The applicant has a physical, emotional or mental disability that renders the applicant unfit to perform the duties authorized by the license, as certified by a licensed psychologist or psychiatrist;

(iii) The applicant is actively addicted to or actively dependent on alcohol or other habit-forming drugs or is a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effect, at the time of application for a license;

(iv) Fraud or deceit committed by the applicant in securing or attempting to secure such certification and license;

(v) Failing or refusing to furnish reasonable evidence of identification;

(vi) The applicant has been convicted, has pled guilty or entered a plea of nolo contendere to a felony, as defined by federal or state law. For purposes of this subparagraph (vi) of this paragraph (a), a "guilty plea" includes a plea of guilty, entry of a plea of nolo contendere, or entry of an order granting pretrial or judicial diversion;

(vii) The applicant or licensee is on probation or post-release supervision for a felony or conviction, as defined by federal or state law. However, this disqualification expires upon the end of the probationary or post-release supervision period.

(b) The State Board of Education, acting through the commission, shall deny an application for any teacher or administrator license, or immediately revoke the current teacher or administrator license, for one or more of the following:

(i) If the applicant or licensee has been convicted, has pled guilty or entered a plea of nolo contendere to a sex offense as defined by federal or state law. For purposes of this subparagraph (i) of this paragraph (b), a "guilty plea" includes a plea of guilty, entry of a plea of nolo contendere, or entry of an order granting pretrial or judicial diversion;

(ii) The applicant or licensee is on probation or post-release supervision for a sex offense conviction, as defined by federal or state law;

(iii) The license holder has fondled a student as described in Section 97-5-23, or had any type of sexual involvement with a student as described in Section 97-3-95; or

(iv) The license holder has failed to report sexual involvement of a school employee with a student as required by Section 97-5-24.

(12) The State Board of Education, acting through the commission, may revoke, suspend or refuse to renew any teacher or administrator license for specified periods of time or may place on probation, reprimand a licensee, or take other disciplinary action with regard to any license issued under this chapter for one or more of the following:

(a) Breach of contract or abandonment of employment may result in the suspension of the license for one (1) school year as provided in Section 37-9-57;

(b) Obtaining a license by fraudulent means shall result in immediate suspension and continued suspension for one (1) year after correction is made;

(c) Suspension or revocation of a certificate or license by another state shall result in immediate suspension or revocation and shall continue until records in the prior state have been cleared;

(d) The license holder has been convicted, has pled guilty or entered a plea of nolo contendere to a felony, as defined by federal or state law. For purposes of this paragraph, a "guilty plea" includes a plea of guilty, entry of a plea of nolo contendere, or entry of an order granting pretrial or judicial diversion;

(e) The license holder knowingly and willfully committing any of the acts affecting validity of mandatory uniform test results as provided in Section 37-16-4(1);

(f) The license holder has engaged in unethical conduct relating to an educator/student relationship as identified by the State Board of Education in its rules;

(g) The license holder served as superintendent or principal in a school district during the time preceding and/or that resulted in the Governor declaring a state of emergency and the State Board of Education appointing a conservator;

(h) The license holder submitted a false certification to the State Department of Education that a statewide test was administered in strict accordance with the Requirements of the Mississippi Statewide Assessment System; or

(i) The license holder has failed to comply with the Procedures for Reporting Infractions as promulgated by the commission and approved by the State Board of Education pursuant to subsection (15) of this section.

For purposes of this subsection, probation shall be defined as a length of time determined by the commission, its subcommittee or hearing officer, and based on the severity of the offense in which the license holder shall meet certain requirements as prescribed by the commission, its subcommittee or hearing officer. Failure to complete the requirements in the time specified shall result in immediate suspension of the license for one (1) year.

(13)(a) Dismissal or suspension of a licensed employee by a local school board pursuant to Section 37-9-59 may result in the suspension or revocation of a license for a length of time which shall be determined by the commission and based upon the severity of the offense.

(b) Any offense committed or attempted in any other state shall result in the same penalty as if committed or attempted in this state.

(c) A person may voluntarily surrender a license. The surrender of such license may result in the commission recommending any of the above penalties without the necessity of a hearing. However, any such license which has voluntarily been surrendered by a licensed employee may only be reinstated by a majority vote of all members of the commission present at the meeting called for such purpose.

(14)(a) A person whose license has been suspended or surrendered on any grounds except criminal grounds may petition for reinstatement of the license after one (1) year from the date of suspension or surrender, or after one-half (1/2) of the suspended or surrendered time has lapsed, whichever is greater. A person whose license has been suspended or revoked on any grounds or violations under subsection (12) of this section may be reinstated automatically or approved for a reinstatement hearing, upon submission of a written request to the commission. A license suspended, revoked or surrendered on criminal grounds may be reinstated upon petition to the commission filed after expiration of the sentence and parole or probationary period imposed upon conviction. A revoked, suspended or surrendered license may be reinstated upon satisfactory showing of evidence of rehabilitation. The commission shall require all who petition for reinstatement to furnish evidence satisfactory to the commission of good character, good mental, emotional and physical health and such other evidence as the commission may deem necessary to establish the petitioner's rehabilitation and fitness to perform the duties authorized by the license.

(b) A person whose license expires while under investigation by the Office of Educator Misconduct for an alleged violation may not be reinstated without a hearing before the commission if required based on the results of the investigation.

(15) Reporting procedures and hearing procedures for dealing with infractions under this section shall be promulgated by the commission, subject to the approval of the State Board of Education. The revocation or suspension of a license shall be effected at the time indicated on the notice of suspension or revocation. The commission shall immediately notify the superintendent of the school district or school board where the teacher or administrator is employed of any disciplinary action and also notify the teacher or administrator of such revocation or suspension and shall maintain records of action taken. The State Board of Education may reverse or remand with instructions any decision of the commission, its subcommittee or hearing officer regarding a petition for reinstatement of a license, and any such decision of the State Board of Education shall be final.

(16) An appeal from the action of the State Board of Education in denying an application, revoking or suspending a license or otherwise disciplining any person under the provisions of this section shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi, on the record made, including a verbatim transcript of the testimony at the hearing. The appeal shall be filed within thirty (30) days after notification of the action of the board is mailed or served and the proceedings in chancery court shall be conducted as other matters coming before the court. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of preparation of the record of the proceedings by the State Board of Education, and the filing of a bond in the sum of Two Hundred Dollars ($200.00) conditioned that if the action of the board be affirmed by the chancery court, the applicant or license holder shall pay the costs of the appeal and the action of the chancery court.

(17) All such programs, rules, regulations, standards and criteria recommended or authorized by the commission shall become effective upon approval

by the State Board of Education as designated by appropriate orders entered upon the minutes thereof.

(18) The granting of a license shall not be deemed a property right nor a guarantee of employment in any public school district. A license is a privilege indicating minimal eligibility for teaching in the public school districts of Mississippi. This section shall in no way alter or abridge the authority of local school districts to require greater qualifications or standards of performance as a prerequisite of initial or continued employment in such districts.

(19) In addition to the reasons specified in subsections (12) and (13) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 10; Laws, 1988, ch. 464, § 1; Laws, 1988, ch. 536, § 1; Laws, 1989, ch. 373, § 1; Laws, 1991, ch. 502, § 1; Laws, 1991, ch. 534, § 1; Laws, 1992, ch. 519, § 2; Laws, 1992, ch. 524, § 2; Laws, 1993, ch. 594, § 1; Laws, 1994, ch. 596, § 1; Laws, 1994, ch. 581, § 16; Laws, 1996, ch. 507, § 9; Laws, 1996, ch. 540, § 1; Laws, 1997, ch. 545, § 1; Laws, 2000, ch. 432, § 1; Laws, 2000, ch. 550, § 1; Laws, 2002, ch. 587, § 1; Laws, 2004, ch. 409, § 1; Laws, 2004, ch. 478, § 1; Laws, 2006, ch. 504, § 3; reenacted without change, Laws, 2009, ch. 345, § 2; reenacted and amended, Laws, 2009, ch. 445, § 2; Laws, 2011, ch. 514, § 1; Laws, 2012, ch. 376, § 1; Laws, 2013, ch. 350, § 3; Laws, 2013, ch. 496, § 1; Laws, 2013, ch. 497, § 39; Laws, 2014, ch. 318, § 1; Laws, 2014, ch. 397, § 8; Laws, 2014, ch. 458, § 3; Laws, 2014, ch. 536, § 3; Laws, 2015, ch. 470, § 2, eff from and after passage (approved Apr. 22, 2015); Laws, 2019, ch. 455, § 1, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 9 of ch. 507, Laws of 1996, effective July 1, 1996, amended this section. Section 1 of ch. 540, Laws of 1996, effective July 1, 1996, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective.

Section 1 of ch. 432, Laws of 2000, effective from and after its passage (approved April 18, 2000), amended this section. Section 1 of ch. 550, Laws of 2000, effective from and after July 1, 2000, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 550, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 1 of ch. 409 Laws of 2004, effective from and after July 1, 2004 (approved April 26, 2004), amended this section. Section 1 of ch. 478, Laws of 2004, effective from and after July 1, 2004 (approved May 1, 2004), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 8, 2004, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (7)(a). The word "have" was changed to "having" preceding "no administrative experience." The Joint Committee ratified the correction at its June 26, 2007, meeting.

Section 2 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), amended this section. Section 2 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 445, Laws of 2009, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (12)(h) by inserting the word "or" following "as described in Section 97-5-23." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (8)(a) of Section 1, Chapter 496 (SB 2188), which amended this section. A reference in the act to "Section 1 of this act" was changed to "Section 1 of Senate Bill No. 2419, 2013 Regular Session." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Section 1 of Senate Bill No. 2419, 2013 Regular Session, is codified as Section 73-50-1, and at the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the reference to Section 1 of Senate Bill No. 2419, 2013 Regular Session, has been changed to reflect the codification of the section.

Section 1 of ch. 318, Laws of 2014, effective from and after passage (approved March 13, 2014), amended this section. Section 8 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), Section 3 of ch. 458, Laws of 2014, effective from and after passage (approved March 31, 2014), and Section 3 of ch. 536, Laws of 2014, effective from and after July 1, 2014 (approved April 24, 2014), also amended this section. As set out above, this section reflects the language of all four amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (12)(*l*) by substituting "The license holder" for "The licensure holder." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (12)(m) by substituting "subsection (15) of this section" for "Section 37-3-2(15)." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in (4)(b) and (6)(d) by substituting "subsections (11), (12), (13), (14) and (15) of this section" for "Section 37-3-2(11), (12), (13), (14) and (15), Mississippi Code of 1972" and "paragraph (a), (b) or (c) of this subsection (6)" for "subsection (6)(a), (b) or (c)," respectively. The Joint Committee ratified the corrections at its August 15, 2017, meeting.

**Editor's Notes —** Laws of 2006, ch. 504 § 1(1), codified at § 37-161-1(1), provides as follows:

"SECTION 1. (1) This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Amendment Notes —** The 2019 amendment, in (2), designated the former first and second sentences (2)(a) and the last three sentences (2)(b), and in (2)(a), in the second sentence, inserted "of the four (4)" and "as such districts existed…decennial census, including" and added the last sentence; rewrote (10), (11) and (12); in (14)(a), substituted references to "suspended" and "suspension" for "revoked" and "revocation" in the first sentence, and inserted "or revoked" in the second sentence; and inserted "its subcommittee or hearing officer" in the last sentence of (15).

**Cross References —** Notification of Department of Education that certificated person has been convicted of a felony or sex offense, see § 37-3-51.

Effect of abandonment of employment, see § 37-9-57.

Violations of mandatory uniform test security procedures, enforcement and penalties, see § 37-16-4.

Failure to repay critical needs teacher forgivable loan and interest as cause for revocation of teaching license, see § 37-106-55.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

**Federal Aspects—** No Child Left Behind Act of 2001, P.L. 107-110, 115 Stat. 1425, see 20 USCS §§ 6301 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

A school district is not required to pay the salary of an assistant teacher while such individual is completing student teaching requirements in another district. Lee, Dec. 12, 2003, A.G. Op. 03-0577.

## § 37-3-3. Office and seal of department.

The office of the State Department of Education shall be in the City of Jackson, Mississippi. The state capitol commission shall provide suitable quarters therefor.

The state superintendent of public education shall provide and keep a seal having around the margin thereof the words "State Department of Education" with the coat of arms of the state in the center. All official acts of the department shall be certified under said seal.

**HISTORY: Codes, 1930, § 6556; 1942, §§ 6245-02, 6245-11; Laws, 1924, ch. 283;**

**Laws, 1930, ch. 278; Laws, 1946, ch. 297, §§ 2, 11; Laws, 1982, Ex Sess, ch. 17, § 9, eff from and after passage (approved December 21, 1982).**

## § 37-3-3.1. State Department of Education board room designated the Senator Grey Ferris Board Room.

The Board Room at the State Department of Education, located in Jackson, Mississippi, shall be named the Senator Grey Ferris Board Room. The Department of Finance and Administration shall prepare a distinctive plaque to be placed in a prominent place within the Senator Grey Ferris Board Room, which states the background, accomplishments and service to the state of the Honorable Grey Ferris.

**HISTORY: Laws, 2009, ch. 460, § 1, eff from and after July 1, 2009.**

## § 37-3-4. School Executive Management Institute; basic and continuing education courses for school board members; additional required training for local school board members and the local superintendent; exemption of certain school administrators.

(1) There is established within the State Department of Education, the School Executive Management Institute. The director shall be appointed by the State Board of Education upon recommendation by the State Superintendent of Public Education. The State Superintendent of Public Education, with the approval of the State Board of Education, shall assign sufficient staff members from the State Department of Education to the institute.

(2) It shall be the purpose and duty of the institute to conduct thorough empirical studies and analyses of the school management needs of the local school districts throughout the state, to make recommendations to the State Board of Education regarding standards and programs of training that aid in the development of administrative and management skills of local school administrators, and to conduct such programs related to these purposes as they are implemented under guidelines established by the State Board of Education.

(3) The State Board of Education shall develop and implement through the School Executive Management Institute a program for the development of administrative and management skills of local school administrators under which all local school administrators employed by a school district shall be required to participate. Subject to the extent of appropriations available for such purpose, the School Executive Management Institute or the Mississippi School Boards Association shall be required to offer courses at least twice a year on the uses of technology to school district principals, superintendents and other administrative personnel. These courses shall relate to the application of technology to learning, as well as administrative problems.

(4)(a) The institute shall have an advisory board composed of ten (10) qualified members appointed by the State Board of Education after consultation with the State Superintendent of Public Education. This advisory board will offer recommendations to the institute on the types of training to be instituted and supported. The membership of the advisory board shall be composed of the following members, two (2) to be appointed from each congressional district: three (3) school administrators; one (1) representative of public community/junior colleges within the state; one (1) representative of a school of education in an institution of higher learning within the state; two (2) local school board members; one (1) classroom teacher; and two (2) laypersons. In making the initial appointments, three (3) members shall be appointed for a term of one (1) year, three (3) members shall be appointed for a term of two (2) years, two (2) members shall be appointed for a term of three (3) years, and two (2) members shall be appointed for a term of four (4) years. Thereafter, all members shall be appointed for a term of four (4) years. The advisory board shall meet when called by the director, but in no event fewer than three (3) times per year. The members of the advisory board shall be compensated at the per diem rate authorized by Section 25-3-69 and reimbursed for actual and necessary expenses as authorized by Section 25-3-41.

(b) Board members of the Oxford-Lafayette Business and Industrial Complex shall be paid per diem and reimbursed for expenses and mileage from local funds in accordance with Section 37-6-13.

(5)(a) Basic Education Course. The Mississippi School Boards Association shall be responsible for preparing and conducting a course of training for basic education for the local school board members of this state, in order for board members to carry out their duties more effectively and be exposed to new ideas involving school restructuring. The basic course shall be known as the "School Board Member Training Course" and shall consist of at least twelve (12) hours of training. The Mississippi School Boards Association shall issue certificates of completion to those school board members who complete the basic education course.

(b) Continuing Education Course. The Mississippi School Boards Association shall be responsible for preparing and conducting a course of training for continuing education for the local school board members of this state, in order for board members to carry out their duties more effectively and be exposed to new ideas involving school restructuring. The continuing education course shall be known as the "Continuing Education Course for School Board Members" and shall consist of at least six (6) hours of training.

(c) Additional Required Training. Effective July 1, 2009, local school board members and the local superintendent that serve in a district with one or more failing schools as determined by the Mississippi Board of Education accountability system as provided for in Section 37-17-6, or serving in a school district that has a serious financial condition as determined by the State Auditor as provided for in Section 37-9-18, shall annually attend additional training provided by the Mississippi School Boards Association.

The Mississippi School Boards Association shall, subject to appropriation, develop and conduct training specific to the local boards' role in improving learning outcomes and effective financial management. Such training shall be known as "Improving Student Outcomes and Academic Success" which shall consist of not less than six (6) hours of training and "Effective Financial Management In Local School Districts" which shall consist of not less than six (6) hours of training. Any local board members and the local superintendent that serve in a school district that meets the criteria for both of the training modules shall annually attend both training sessions for a total of not less than twelve (12) hours of training. At such time the school district is determined to no longer have failing schools; or no longer has a serious financial condition, such board member and the local superintendent shall no longer be required to attend the training as provided herein. The training as required under subsection (c) shall not replace, but is in addition to, the training required for new school board members and continuing board members as required under Section 37-7-306.

The Mississippi School Boards Association shall issue certificates of completion to those school board members who complete the continuing education course. All costs and expenses for preparing and conducting the basic education course and the continuing education course provided for in this paragraph shall be paid out of any funds which are made available to the Mississippi School Boards Association upon authorization and appropriation by the Legislature to the State Department of Education.

(6) The Mississippi School Boards Association shall prepare and submit a report each year to the State Board of Education and to the respective Chairs of the House and Senate Education Committees describing the activities and providing an evaluation of the continuing education programs offered by the association each year.

(7) The School Executive Management Institute of the State Department of Education, or the Mississippi School Boards Association with the oversight of the State Board of Education, at least twice a year, shall prepare and conduct required courses of training for continuing education for the elementary and secondary school principals employed by the school districts of this state, in order for those principals to carry out their duties more effectively and be exposed to new ideas involving school management. The continuing education course shall be known as the "Continuing Education Course for Principals" and shall consist of at least six (6) hours of training. The content of the continuing education courses and the time and place such courses are to be conducted shall be determined by the School Executive Management Institute or the Mississippi School Boards Association; however, to the extent practicable, such training sessions shall be held within geographical proximity of local districts in order that travel times and costs shall not be prohibitive.

The institute shall issue certificates of completion to those principals who complete such courses. All costs and expenses for preparing and conducting the basic and continuing education courses provided for in this subsection shall be paid out of any funds which are made available to the institute upon authorization and appropriation by the Legislature.

(8) School district principals and other administrators with career level certifications at schools meeting the highest levels of accreditation standards, as defined by the State Board of Education, are exempt from the requirements of this section, subject to approval of the local school district superintendent.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 11; Laws, 1991, ch. 502, § 10; Laws, 1992, ch. 519, § 3; Laws, 1998, ch. 564, § 1; Laws, 2002, ch. 611, § 4; Laws, 2006, ch. 334, § 1; Laws, 2006, ch. 335, § 1; Laws, 2006, ch. 417, § 4; Laws, 2008, ch. 338, § 1; Laws, 2009, ch. 345, § 3; Laws, 2009, ch. 445, § 3; Laws, 2009, ch. 516, § 5; Laws, 2013, ch. 497, § 40, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Section 1 of ch. 334, Laws of 2006, effective from and after July 1, 2006 (approved March 9, 2006), amended this section. Section 1 of ch. 335, Laws of 2006, effective from and after July 1, 2006 (approved March 13, 2006), and Section 4 of ch. 417, Laws of 2006, effective July 1, 2006 (approved March 15, 2006), also amended this section. As set out above, this section reflects the language of all three amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 31, 2006 meeting of the Committee.

Section 3 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), amended this section. Section 3 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), and Section 5 of ch. 516, Laws of 2009, effective from and after passage (approved April 8, 2009), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 445, Laws of 2009, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes —** Laws of 1990, Chapter 588, § 8, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. However, funds were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. The text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

The United States Attorney General by letter dated July 9, 1991, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 502, § 10.

On July 13, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1998, ch. 564, § 1.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2009, ch. 516 § 1 provides:

"SECTION 1. This act shall be entitled and may be cited as the "Children First Act of 2009."

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

Principals and administrators with career level certifications at schools with Level 4 or 5 accreditation standards exempt from the provisions of this section, subject to approval of the local superintendent, see § 37-17-12.

### OPINIONS OF THE ATTORNEY GENERAL

A course conducted by the School Executive Management Institute of the State Department of Education may not charge a fee to participants; however, any individual, group or association approved by the State Board of Education may charge participants for the course of training. Thompson, Oct. 30, 1991, A.G. Op. #91-0795.

The State Department of Education does not have to conduct the training if no funds are appropriated, it must establish appropriate criteria for same and the State Board of Education may approve a course of training offered by any individual, group or association which meets the criteria established. Thompson, Oct. 30, 1991, A.G. Op. #91-0795.

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

School board members must receive six hours of continuing education training during the 2004-2005 school year. Chaney, Aug. 6, 2004, A.G. Op. 04-0334.

The Mississippi School Boards Association has the authority to charge an amount equal to the actual cost of training for continuing education for school board members. Chaney, Aug. 6, 2004, A.G. Op. 04-0334.

## § 37-3-5. General duties of department; grants of property to public and agricultural high schools; administration of department.

The State Department of Education is hereby charged with the execution of all laws relating to the administrative, supervisory and consultative services to the public schools and agricultural high schools of the school districts throughout the State of Mississippi. The State Department of Education is also authorized to grant property to public school districts and agricultural high schools of the State of Mississippi.

Subject to the direction of the State Board of Education as provided by law, the administration, management and control of the department is hereby vested in the State Superintendent of Public Education, who shall be directly responsible for the rightful functioning thereof.

**HISTORY: Codes, 1942, § 6245-02; Laws, 1946, ch. 297, § 2; Laws, 1986, ch. 434, § 3; Laws, 1996, ch. 534, § 1; Laws, 2013, ch. 497, § 41, eff from and after July 1, 2013.**

**Cross References** — Appointment and compensation of personnel of department and requirement of adherence to appropriated sums, see § 37-3-13.

Duty of the state department of education to establish an instructional program and management system for local school districts, see § 37-3-49.

Requirement that the State Department of Education devise a form and a procedure for reporting the number of compulsory attendance violations and other information concerning public school attendance, see § 37-13-91.

Implementation of a statewide assessment testing program, see § 37-16-1 et seq.

Department's responsibility to implement a statewide system of assistant teachers, see § 37-21-7.

Authority to establish county agricultural high schools, see § 37-27-1.

Upon request department to provide information and technical assistance to Charter School Authorizer Board, see § 37-28-13.

Authority to establish junior colleges, see § 37-29-1.

Administration by the state board of education of vocational rehabilitation law, see § 37-33-19.

Duties of state department of Human Services as to the vocational rehabilitation for the blind law, see § 37-33-59.

Duties of the state department of education with respect to the Mississippi School for Math and Science, see § 37-139-7.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 84.

**CJS.**

78 C.J.S., Schools and School Districts §§ 188, 191–203.

## § 37-3-7. Study of costs of insurance on school buildings and facilities.

(1) It shall be the duty and obligation of the State Department of Education, in addition to all other duties and responsibilities imposed upon it by law, to make a survey and study relative to the problem of the cost of insuring public school buildings and other school facilities in this state. Such study and survey shall have as its purpose and object the development and ascertainment of the amount of insurance premiums paid by the school districts of this state for fire, extended coverage and other hazard insurance upon public school buildings and other school facilities in this state, the amount of losses paid by insurance companies under and by virtue of such insurance, the ratio of losses with respect to premiums collected, and such other facts and information with reference to the insurance of public school buildings and other school facilities and the cost thereof as shall be necessary and desirable.

(2) In making such study and survey, the State Department of Education shall be authorized and empowered to inspect and examine the financial records and accounts of the school districts of this state and of such other local, county and state agencies and instrumentalities as shall be deemed to be proper and desirable. It shall be the duty and obligation of all such school districts to prepare and file with the State Department of Education such reports relative to insurance premiums paid, losses sustained or incurred, and other pertinent information with reference to the problem of insurance on school buildings and other school facilities as the State Department of Education shall request.

(3) It shall be the duty and obligation of the State Insurance Commissioner, the State Fire Marshal, all other agencies of the State of Mississippi and the State Rating Bureau to cooperate with and assist the State Department of Education in the making of the study and survey herein provided for

to the end that complete and accurate information shall be developed, and, for such purpose, it shall be the duty and obligation of all such agencies to furnish, upon request of the State Department of Education, all information, material and statistics relating to such study and survey as shall be within the keeping and possession of such agency.

(4) The information developed by the State Department of Education shall be a public record and shall be available for inspection by any interested party at all proper times.

**HISTORY: Codes, 1942, § 6245-09.5; Laws, 1960, ch. 313, §§ 1-5; Laws, 1970, ch. 365, § 1; Laws, 2009, ch. 546, § 12; Laws, 2011, ch. 442, § 8, eff from and after July 1, 2011.**

**Cross References —** General powers and duties of the state department of audit, see § 7-7-211.

Authority of boards of trustees of school districts to insure school property, see § 37-7-303.

Investigation of fires by the commissioner of insurance, see § 45-11-1.

Election and qualifications of the commissioner of insurance, see § 83-1-3.

## § 37-3-8. Studies and reports by department of education relating to teaching out of fields and mastery of subject matters.

The State Department of Education shall conduct the following studies and shall report its findings to the State Board of Education on July 1, 1984, and the board shall submit these reports to the next regular session of the Legislature together with any corrective action taken and with recommendations for any further corrective action that might be required:

(a) Teaching out of field. A study shall be conducted to determine the extent to which teachers are teaching out of their fields of certification; the conditions that promote such a practice; and the most appropriate remedies to the problem.

(b) Mastery of subject matter and learning skills. A study shall be conducted to determine the extent to which children master one level of course work before being advanced to the next level; what may be done to assure that progression from one level to another is properly sequenced; and what steps are now being taken to assure that children are progressing satisfactorily toward mastery of the material under study.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 7; Laws, 2011, ch. 442, § 9, eff from and after July 1, 2011.**

## § 37-3-9. Appointment, qualifications, compensation and bond of State Superintendent of Public Education.

(1) There shall be a State Superintendent of Public Education who shall be appointed by the State Board of Education, with the advice and consent of the Senate, and serve at the board's will and pleasure. He shall be the Chief

Administrative Officer for the State Department of Education and shall administer the department in accordance with the policies established by the State Board of Education. The State Superintendent of Education, serving on July 1, 2011, shall continue to receive the salary that he was receiving on January 1, 2011. From and after the completion of the term of the said superintendent serving on July 1, 2011, the salary of the State Superintendent of Education shall be established by the State Board of Education. The State Superintendent of Public Education shall have at least a master's degree in any field and a minimum of five (5) years' experience in administration in the educational field.

(2) The State Superintendent shall give bond in the penalty of Seventy-five Thousand Dollars ($75,000.00), with sureties to be approved by the Governor, conditioned according to law. The bond, when approved, shall be filed and recorded in the Office of the Secretary of State.

**HISTORY: Codes, 1930, § 6555; 1942, § 6245-03; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1946, ch. 297, § 3; Laws, 1982, Ex Sess, ch. 17, § 14; Laws, 1986, ch. 432, § 2; Laws, 1999, ch. 581, § 2; Laws, 2011, ch. 421, § 1, eff from and after July 1, 2011.**

**Cross References** — Before whom oaths of state officers may be taken, see § 25-1-9.
Filing of oaths of state officers, see § 25-1-11.
Giving of guaranty or surety bonds by state officers, see § 25-1-13.
Salary of the state superintendent of public education, see § 25-3-31.
Power of department heads to select, appoint, and remove subordinates, see § 25-3-47.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 176-186.

## § 37-3-11. General duties of state superintendent.

The State Superintendent of Public Education shall perform the duties assigned to him by the State Board of Education, and he shall have the following duties:

(a) To serve as secretary for the State Board of Education;

(b) To be the chief administrative officer of the State Department of Education;

(c) To recommend to the State Board of Education, for its consideration, rules and regulations for the supervision of the public schools and agricultural high schools of the school districts throughout the state and for the efficient organization and conduct of the same;

(d) To collect data and make it available to the state board for determining the proper distribution of the state common school funds;

(e) To keep a complete record of all official acts of the State Superintendent and the acts of the State Board of Education;

(f) To prepare, have printed and furnish all officers charged with the administration of the laws pertaining to the public schools, such blank forms and books as may be necessary to the proper discharge of their duties, which printing is to be paid for out of funds provided by the Legislature;

(g) To have printed in pamphlet form the laws pertaining to the public schools and publish therein forms for conducting school business, the rules and regulations for the government of schools that the State Superintendent or the State Board of Education may recommend, and such other matters as may be deemed worthy of public interest pertaining to the public schools, which printing is to be paid for out of funds provided by the Legislature;

(h) To meet all superintendents annually at such time and place as the State Superintendent shall appoint for the purpose of accumulating facts relative to schools, to review the educational progress made in the various sections of the state, to compare views, discuss problems, hear discussions and suggestions relative to examinations and qualifications of teachers, methods of instruction, textbooks, summer schools for teachers, visitation of schools, consolidation of schools, health work in the schools, vocational education and other matters pertaining to the public school system;

(i) To advise all superintendents upon all matters involving the welfare of the schools, and at the request of any superintendent, to give an opinion upon a written statement of facts on all questions and controversies arising out of the interpretation and construction of the school laws, in regard to rights, powers and duties of school officers and superintendents, and to keep a record of all such decisions. Before giving any opinion, the superintendent may submit the statement of facts to the Attorney General, and it shall be the duty of the Attorney General forthwith to examine such statement and suggest the proper decision to be made upon such fact;

(j) To require annually, and as often as the State Superintendent may deem proper, of all superintendents, detailed reports on the educational business of the various districts;

(k) On or before January 10 in each year to prepare, under the direction of the State Board of Education, the annual information report of the State Department of Education as described in Section 37-151-97;

(*l*) To determine the number of educable children in the several school districts under rules and regulations prescribed by the State Board of Education; and

(m) To perform such other duties as may be prescribed by the State Board of Education.

**HISTORY: Codes, 1930, § 6557; 1942, §§ 6245-07, 6245-07.5; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1946, ch. 297, § 7; Laws, 1966, ch. 418, § 1; Laws, 1970, ch. 364, § 1; Laws, 1982, Ex Sess, ch. 17, § 15; Laws, 1986, ch. 434, § 4; Laws, 2006, ch. 550, § 1; Laws, 2011, ch. 442, § 3; Laws, 2013, ch. 497, § 42, eff from and after July 1, 2013.**

**Editor's Notes —** The preamble and § 1 of Laws of 2007, ch. 456, effective March 26, 2007, provide:

"WHEREAS, autism is a complex developmental disability that typically appears during the first three (3) years of life and is part of a group of disorders known as Autism Spectrum Disorders (ASD); and

"WHEREAS, as of the effective date of this act, at least one (1) in one hundred sixty-six (166) individuals in the United States is diagnosed with autism, making it more common than the occurrences in our population of pediatric cancer, diabetes, and AIDS combined; and

"WHEREAS, autism impairs a person's ability to communicate and relate to others; is associated with rigid routines and repetitive behaviors, such as obsessively arranging objects or following very specific routines; is four (4) times more likely to strike boys than girls; and occurs in all racial, ethnic and social groups; and

"WHEREAS, symptoms of the disability can range from very mild to quite severe, and autistic behaviors not only make life difficult for those individuals who suffer from the disability, but also make life hard for their families, health care providers and teachers; and

"WHEREAS, families coping with this devastating illness are searching for answers about its causes, diagnosis, prevention and treatment, and while there is no known means to prevent the disability, there are indications that early intervention in an appropriate educational setting for at least two (2) years during the preschool years can result in significant improvements for many young children with the disorder; and

"WHEREAS, the Mississippi Legislature recognizes that strategies for how to best identify, treat and accommodate the needs of individuals with autism and of their families are urgently needed in our state; NOW, THEREFORE,

"SECTION 1. (1) The Caring for Mississippi Individuals with Autism Task Force is created to study and make recommendations to the Mississippi Legislature regarding the growing incidence of autism and Autism Spectrum Disorders (ASD), how to identify, treat and accommodate the needs of individuals with autism and ASD, and ways to improve the delivery and coordination of state services provided to individuals with autism and ASD. Members of the task force shall be composed of the following:

"(a) Three (3) persons who are the parents of children with autism or ASD, with one (1) such person to be appointed by the Governor, one (1) to be appointed by the Lieutenant Governor, and one (1) to be appointed by the Speaker of the House;

"(b) One (1) person who is a member of the governing body of a school district, to be appointed by the State Superintendent of Public Education;

"(c) One (1) person who represents the State Department of Education, to be appointed by the State Superintendent of Public Education;

"(d) One (1) person who is the director of special education services in a school district, to be appointed by the State Superintendent of Public Education;

"(e) One (1) person who is a representative of the State Department of Mental Health, to be appointed by the executive director of the department;

"(f) Three (3) persons who are representatives of the State Department of Mental Health who are from regions in the state that provide services to individuals with autism or ASD, to be appointed by the executive director of the department;

"(g) One (1) person who is a representative of the University of Mississippi Medical Center and who provides medical or other services to individuals with autism or ASD, to be appointed by the Vice Chancellor of the University of Mississippi Medical Center;

"(h) Two (2) persons who are Mississippi pediatricians engaged in the private practice of medicine and who provide treatment to individuals with autism or ASD, to be appointed by the Vice Chancellor of the University of Mississippi Medical Center;

"(i) Two (2) persons who are licensed therapists appointed by the President of the Mississippi Speech Language and Hearing Association.

"(2) The task force shall:

"(a) Review the best practices of other states with regard to educational, medical and early intervention services provided to individuals diagnosed with autism or ASD and identify the best practices of other states;

"(b) Review the standard of services provided by local Mississippi school districts and early intervention programs to individuals diagnosed with autism or ASD, identify any additional potential funding sources for school districts, and identify guidelines for measurable educational and instructional goals that can be used by members of the education community for serving children with autism or ASD;

"(c) Assess the medical availability of services currently provided for early screening, diagnosis and treatment of autism and ASD and provide recommendations for enhancing medical services;

"(d) Identify the role of higher education in developing a workforce in Mississippi possessing the skills necessary to assist individuals with autism or ASD in medical, educational, and vocational efforts or in providing additional services associated with autism or ASD;

"(e) Evaluate and identify any and all additional relevant information and make legislative recommendations regarding the development and implementation of a continuum of educational and medical services for individuals with autism or ASD; and

"(f) File a report with those standing committees of the Mississippi State Legislature and with those state agencies having jurisdiction over specific recommendations of the task force, not later than December 1, 2007.

"(3) The task force shall hold its first meeting not later than April 1, 2007, with the date, time and location of the meeting to be designated by the Governor. At that first meeting, the task force shall elect from among its membership a chairman, vice chairman and any other officers determined to be necessary, and shall set the date, time and location of its next meeting.

"(4) The State Department of Mental Health shall provide the staff and other support necessary for the Caring for Mississippi Individuals with Autism Task Force to perform its duties."

Laws of 2011, ch. 494, § 1, provides:

"SECTION 1. (1) There is hereby established a Commission on School Payroll, Business and Procurement Efficiency, consisting of the following members:

"(a) The State Fiscal Officer, or his designee;

"(b) The State Superintendent of Education, or his designee;

"(c) A representative of the Mississippi School Superintendents Association (MASS);

"(d) A representative of the Mississippi School Business Officials Association (MSBO);

"(e) A representative of the Mississippi School Boards Association (MSBA);

"(f) Three (3) appointments, one (1) each by the Governor, the Lieutenant Governor and the State Treasurer, of qualified state or school district employees proficient in the areas of fiscal management, procurement, data processing or other fields of school business;

"(g) The Chairmen of the Senate and House Education Committees, who shall serve in an advisory, nonvoting capacity.

"The commission shall meet on a date designated by the State Fiscal Officer and organize by selecting a chairman and adopt rules for conducting business. Members of the commission shall serve without compensation, but may be reimbursed for necessary travel expenses from any available funds for attending official meetings of the commission. The Department of Finance and Administration and the State Department of Education shall jointly provide necessary administrative and clerical support for the functions of the commission.

"(2) The Commission on School Payroll, Business and Procurement Efficiency shall develop an implementation plan to bring coordinated payroll services, business services and procurement services online for all school districts in order to achieve efficiency and make a report thereon to the 2012 Regular Session of the Legislature on or before January 1, 2012. Said commission shall have the following responsibilities:

"(a) Review laws, rules, regulations, policies and procedures which affect the implementation and administration of the school payroll, business and procurement systems;

"(b) Identify required modifications and/or enhancements to the systems; and

"(c) Identify compliance requirements.

"(3) The Commission on School Payroll, Business and Procurement Efficiency shall include in its report to the Legislature at the 2012 Regular Session the anticipated savings and efficiencies to be gained resulting from the consolidation of the payroll, business and procurement functions of school districts to be implemented under this timetable. Such report shall include any technical legislative or administrative recommendations for further consolidation of payroll, business and procurement functions of school districts. Such report shall also include an administrative recommendation for the consolidation or outsourcing of shared information technology, computer and telecommunications services for all school districts, in conjunction with the Mississippi Department of Information Technology Services."

Laws of 2011, ch. 511, § 1, provides:

"SECTION 1. (1) The State Superintendent of Public Education, the Commissioner of Higher Education and the Executive Director of the State Board for Community and Junior Colleges, acting jointly, shall develop a comprehensive report and recommendations to the 2012 Legislature on the implementation and operations of 'Early College High Schools.' The report shall be submitted no later than January 2, 2012, and shall provide, at a minimum, the following:

"(a) A clear definition of what constitutes an Early College High School and how it enhances education and job-related opportunities;

"(b) The mission and intent of such schools;

"(c) The established criteria for admission;

"(d) An outline of the comprehensive costs of establishing and operating such a school, including transportation, and recommendations on how the state and local school districts should pay those costs;

"(e) A requirement to provide reports on the status and level of success of operating Early College High Schools in other states across the country;

"(f) Implications for student participation in sports programs and other extracurricular activities when attending an Early College High School;

"(g) An identification of and recommendations on any state laws and policies that may need amending to provide authority for the implementation and operation of such schools;

"(h) Recommendations and costs for state and local funding of transportation services for other forms of dual enrollment programs operated across the state; and

"(i) Any other information as determined to be necessary to benefit the scope and detail of the report.

"(2) The State Superintendent of Public Education, the Commissioner of Higher Education and the Executive Director of the State Board for Community and Junior Colleges, acting jointly, shall include specific recommendations on the establishment of an Early College High School Pilot Program in Mississippi in the report submitted to the 2012 Legislature."

**Cross References —** Duty of the attorney general to give written opinion to state officers upon questions of law relating to their offices, see § 7-5-25.

Duty of the state superintendent of public education to preside over meetings of the state board of education, see § 37-1-1.

Responsibility of the state superintendent of public education for planning functions of the department, see § 37-3-12.

Public educational services and equipment for exceptional children, including children with autism, see § 37-23-1 et seq.

Duties of the state superintendent of public education in respect to driver education and training programs, see §§ 37-25-5, 37-25-13.

Duty of the state superintendent of public education to inspect and enforce standards of agricultural high schools, see § 37-27-17.

Duty of the state superintendent of public education to serve on the state library board, see § 39-1-1.

Duty of the state superintendent of public education to serve on board overseeing state fire fighters school, see § 45-11-7.

Duty of the state superintendent of public education to consult with the secretary of state in respect to rules and regulations covering correspondence courses, see § 75-59-7.

## RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 A.L.R.3d 996.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 A.L.R.3d 1201.

**Am. Jur.**

67B Am. Jur. 2d, Schools § 84.

**CJS.**

78 C.J.S., Schools and School Districts §§ 188, 191–203.

## § 37-3-12. Responsibility of state superintendent for planning functions of department.

The state superintendent of public education shall be responsible for all planning functions for the department, including collection, analysis and interpretation of all data, information, test results, evaluations and other indicators that are used to formulate policy, identify areas of concern and need and to serve as a basis for short-range and long-range planning. Such planning shall include assembling data, conducting appropriate studies and surveys and sponsoring research and development activities designed to provide information about educational needs and the effect of alternative educational practices.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 16, eff from and after passage (approved December 21, 1982).**

**Cross References —** General duties of State Superintendent, see § 37-3-11.

## § 37-3-13. Appointment and compensation of deputy superintendents, associate superintendents, directors and other employees; exemption of personnel actions of State Department of Education from State Personnel Board procedures for limited time period.

(1) The deputy superintendents, associate superintendents and directors shall be selected by and hold office subject to the will of the State Superintendent of Public Education subject to the approval of the State Board of Education. All other personnel shall be competitively appointed by the State

Superintendent and shall be dismissed only for cause in accordance with the rules and regulations of the State Personnel Board. The State Board of Education shall set the salary of the deputy superintendents, associate superintendents and divisional directors, and the members of the teaching staffs and employees of the Mississippi School of the Arts. The State Superintendent, subject to the approval of the State Personnel Board, shall fix the amount of compensation of all other employees of the State Department of Education. All salaries, compensation or expenses of any of the personnel of the department shall be paid upon the requisition of the State Superintendent of Public Education and warrant issued thereunder by the State Auditor out of funds appropriated by the Legislature in a lump sum upon the basis of budgetary requirements submitted by the Superintendent of Education or out of funds otherwise made available. The entire expense of administering the department shall never exceed the amount appropriated therefor, plus funds received from other sources other than state appropriations. For a violation of this provision, the superintendent shall be liable, and he and the sureties on his bond shall be required to restore any such excess.

(2) For a period of two (2) years beginning July 1, 2014, the provisions of subsection (1) regarding the personnel actions of the State Department of Education shall not be subject to the rules and regulations of the State Personnel Board for all personnel employed by the department within that period. All personnel hired within the period of exemption from the state personnel system shall be classified as nonstate service and must meet the criteria of the State Personnel Board as it presently exists for employment.

**HISTORY: Codes, 1942, § 6245-04; Laws, 1946, ch. 297, § 4; Laws, 1982, Ex Sess, ch. 17, § 17; Laws, 1983, ch. 536, § 5; Laws, 1999, ch. 591, § 9; Laws, 2014, ch. 491, § 3, eff from and after passage (approved April 15, 2014).**

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 37-3-17, referred to in subsection (1), was repealed by Laws of 1982 Extraordinary Session, Chapter 17, § 43, effective from and after July 1, 1984. For present similar provisions, see § 37-3-25.

**Cross References —** Executive Director of the Department of Finance and Administration generally, see § 7-7-1 et seq.

Power of department heads to select, appoint, and remove subordinates, see § 25-3-47.

State personnel board generally, see § 25-9-109 et seq.

State Board of Education generally, see § 37-1-1 et seq.

Mississippi School of the Arts generally, see § 37-140-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 176-186.

## §§ 37-3-15 through 37-3-23. Repealed.

Repealed by 1982, Ex Sess, ch. 17, § 43, eff from and after July 1, 1984.

§ 37-3-15. [Codes, 1942, § 6245-05; Laws, 1946, ch. 297, § 5]

§ 37-3-17. [Codes, 1942, § 6245-06; Laws, 1946, ch. 297, § 6; Laws, 1970, ch. 363, § 2; Laws, 1982, ch. 493, § 9]

§ 37-3-19. [Codes, 1942, § 6245-08; Laws, 1946, ch. 297, § 8; Laws, 1948, ch. 294, § 1; Laws, 1964, ch. 383; Laws, 1968, ch. 388, § 4; Laws, 1970, ch. 363, § 3]

§ 37-3-21. [Codes, 1942, § 6245-08; Laws, 1946, ch. 297, § 8; Laws, 1948, ch. 294, § 1; Laws, 1964, ch. 383; Laws, 1968, ch. 388, § 4; Laws, 1970, ch. 363, § 3]

§ 37-3-23. [Codes, 1942, § 6245-08; Laws, 1946, ch. 297, § 8; Laws, 1948, ch. 294, § 1; Laws, 1964, ch. 383; Laws, 1968, ch. 388, § 4; Laws, 1970, ch. 363, § 3]

**Editor's Notes** — Former § 37-3-15 provided for salaries and expenses of the state superintendent, assistant state superintendent, division directors, supervisors, and employees of state department of education. For present similar provisions, see §§ 37-3-9, 37-3-13.

Former § 37-3-17 provided for appointment and compensation of directors and employees of divisions of vocational education and rehabilitation. For present similar provisions, see § 37-3-25.

Former § 37-3-19 provided for duties of director of division of administration and finance.

Former § 37-3-21 provided for duties of director of division of instruction.

Former § 37-3-23 provided for duties of the director of division of school building and transportation services.

## § 37-3-25. Appointment, compensation and duties of Director of Division of Vocational and Technical Education.

(1) The Director of the Division of Vocational and Technical Education of the State Department of Education who shall be an associate state superintendent of education shall be appointed by the State Superintendent of Public Education. The director's salary shall be set by the State Board of Education subject to the approval of the State Personnel Board. His salary, compensation, travel expenses or other expenses shall be provided for out of any funds made available for such purpose by the Legislature, the federal government, or other gifts or grants. The director shall be responsible to the State Superintendent of Public Education for the proper administration of the programs of vocational

and technical education in conformity with the policies adopted by the State Board of Education and shall be responsible for appointing any necessary supervisors, assistants, and employees to assist in carrying out the programs of vocational and technical education. The director shall have the authority to employ, compensate, terminate, promote, demote, transfer or reprimand employees of the division. The salary and compensation of such employees shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq. However, if for any reason within the two-year period beginning July 1, 2014, a new Director of the Division of Vocational and Technical Education or other personnel within the division are employed by the department, the employment shall not be subject to the rules and regulations of the State Personnel Board, except as otherwise provided in Section 25-9-127(4).

(2) The Director of the Division of Vocational and Technical Education, subject to the approval of the State Board of Education, shall have charge of and be responsible for vocational and technical education training in:

(a) Agriculture;
(b) Occupational and consumer home economics;
(c) Consumer and homemaking education;
(d) Trades and industry;
(e) Distributive education;
(f) Secondary adult education;
(g) Teacher training and supervision;
(h) Business and office;
(i) Health;
(j) Industrial arts;
(k) Guidance services;
(*l*) Technical education;
(m) Cooperative education; and
(n) All other specialized training not requiring a bachelors degree, with the exception of programs of nursing education regulated under the provisions of Section 37-129-1.

**HISTORY: Codes, 1942, § 6245-08; Laws, 1946, ch. 297, § 8; Laws, 1948, ch. 294, § 1; Laws, 1964, ch. 383; Laws, 1968, ch. 388, § 4; Laws, 1970, ch. 363, § 3; Laws, 1982, ch. 493, § 6; Laws, 1992, ch. 482, § 1; Laws, 1999, ch. 572, § 2; Laws, 2014, ch. 491, § 4, eff from and after passage (approved April 15, 2014).**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References —** Contracts and cooperation between the division of vocational technical education of the state department of education and the division of job development and training of the office of the governor, see § 7-1-363.

State personnel board generally, see § 25-9-109 et seq.

State Board of Education generally, see § 37-1-1 et seq.

General duties of state superintendent, see § 37-3-11.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 84.

**CJS.**
78 C.J.S., Schools and School Districts §§ 188, 191–203.

## § 37-3-27. Repealed.

Repealed by Laws, 1982, Ex Sess, ch. 17, § 43, eff from and after July 1, 1984.

[Codes, 1942, § 6245-08; Laws, 1946, ch. 297, § 8; Laws, 1948, ch. 294, § 1; Laws, 1964, ch. 383; Laws, 1968, ch. 388, § 4; Laws, 1970, ch. 363, § 3]

**Editor's Notes** — Former § 37-3-27 provided for duties of the director of division of vocational rehabilitation. For present similar provisions, see § 37-3-25.

## § 37-3-29. Repealed.

Repealed by Laws, 1986, ch. 434, § 17, eff from and after July 1, 1986 (became law on April 4, 1986, without Governor's signature).

[Codes, 1942, § 6245-08; Laws, 1946, ch. 297, § 8; Laws, 1948, ch. 294, § 1; Laws, 1964, ch. 383; Laws, 1968, ch. 388, § 4; Laws, 1970, ch. 363, § 3]

**Editor's Notes** — Former § 37-3-29 provided for duties of the director of division of junior colleges.

## § 37-3-31. Repealed.

Repealed by Laws, 1982, Ex Sess, ch. 17, § 43, eff from and after July 1, 1984.

[Codes, 1942, § 6245-09; Laws, 1946, ch. 297, § 9]

**Editor's Notes** — Former § 37-3-31 assigned additional services to existing divisions and fixed responsibility for proper administration of department of education in the superintendent of public education.

## §§ 37-3-33 through 37-3-37. Repealed.

Repealed by Laws, 1986, ch. 434, § 17, eff from and after July 1, 1986 (became law on April 4, 1986, without Governor's signature).

§ 37-3-33. [Codes, 1942, § 6248-131; Laws, 1968, ch. 388, § 1]

§ 37-3-35. [Codes, 1942, § 6248-132; Laws, 1968, ch. 388, § 2]

§ 37-3-37. [Codes, 1942, § 6248-133; Laws, 1968, ch. 388, § 3; Laws, 1984, ch. 488, § 198]

**Editor's Notes** — Former § 37-3-33 provided for general functions of the division of junior colleges, qualifications of director, and selection of personnel.

Former § 37-3-35 provided for principal functions of the division of junior colleges.

Former § 37-3-37 provided for specific responsibilities of the director of division of junior colleges.

## § 37-3-39. Custody and disbursement of funds of department.

The state treasurer is hereby designated and appointed custodian of all funds made available to the state department of education other than such funds as may be appropriated by the legislature, and he is hereby authorized to receive and to provide for the proper custody of the same. All such funds shall be disbursed by the treasurer on warrants drawn therefor by the state auditor on requisitions of the state superintendent of public education.

**HISTORY: Codes, 1942, § 6245-10; Laws, 1946, ch. 297, § 10.**

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

**Cross References —** Designation of state treasurer as sole agent to receive and disburse certain funds to be expended under the direction of state officials or agencies for benefit of state, see § 7-9-23.

General duties of state superintendent of education, see § 37-3-11.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 120, 122.

**CJS.**

78 C.J.S., Schools and School Districts §§ 9 et seq.

## § 37-3-41. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

[Codes, 1930, § 6558; 1942, § 6245-12; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1946, ch. 297, § 12]

**Editor's Notes —** Former § 37-3-41 prohibited interests of officers and members of department in any outside author, publisher, bookseller, or seller of school apparatus or furniture.

## § 37-3-43. Repealed.

Repealed by Laws, 1986, ch. 500, § 55, eff from and after July 1, 1986.

[Laws, 1975, ch. 310, § 1]

**Editor's Notes —** Former § 37-3-43 set forth the legislature's declaration of purpose with respect to a state program of educational accountability and assessment of performance. For present similar provisions, see § 37-3-46.

### § 37-3-46. Assistance to certain local schools or school districts to establish program of educational accountability and assessment of performance; personnel appraisal and compensation system for school employees; programs to prevent dropouts.

(1) The State Department of Education, in regard to any school within a school district or any school district not meeting adequate performance of accreditation standards, as defined by the State Board of Education, shall, subject to appropriation:

(a) Provide to local school districts, or specific schools within those districts, financial, training and other assistance to implement and maintain a state program of educational accountability and assessment of performance.

(b) Provide to local school districts, or specific schools within those districts, technical assistance and training in the development, implementation and administration of a personnel appraisal and compensation system for all school employees.

(c) Provide to local school districts, or specific schools within those districts, technical assistance in the development, implementation and administration of programs designed to keep children in school voluntarily and to prevent dropouts.

(2) Schools or school districts receiving assistance from the State Department of Education as outlined in subsection (1) of this section shall be required to implement any training, programs, and any other requirements as specified by the State Superintendent of Public Education.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 8; Laws, 2006, ch. 417, § 5; Laws, 2009, ch. 345, § 4; Laws, 2009, ch. 445, § 1; Laws, 2009, ch. 516, § 6; Laws, 2010, ch. 488, § 1; Laws, 2013, ch. 497, § 43, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Section 1 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), amended this section. Section 4 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), and Section 6 of ch. 516, Laws of 2009, effective from and after passage (approved April 8, 2009), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes —** Laws of 1990, Chapter 588, § 19, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. However, funds, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not implemented. The text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a statutory reference in (2) was changed by substituting "subsection (1) of this section" for "Section 37-3-46(1)."

Laws of 2009, ch. 516 § 1 provides:

"SECTION 1. This act shall be entitled and may be cited as the "Children First Act of 2009."

**Cross References —** State department of education providing an instructional program and management system to local school districts as part of the state program of educational accountability and assessment of performance as prescribed in this section, see § 37-3-49.

Exemption from the provisions of this section for school districts meeting Level 4 or 5 accreditation standards, see § 37-17-12.

### RESEARCH REFERENCES

**Law Reviews.**

The Legal Status of Functional Literacy Examinations. 58 Miss. L. J. 305, Fall 1988.

## § 37-3-47. Repealed.

Repealed by Laws, 1986, ch. 500, § 55, eff from and after July 1, 1986.

[Laws, 1975, ch. 310, § 3]

**Editor's Notes —** Former § 37-3-47 set forth the duties of school boards with respect to a state program of educational accountability and assessment of performance.

## § 37-3-48. Repealed.

Repealed by Laws, 1989, ch. 585, § 4, eff April 25, 1989 (became law without the Governor's signature).

[Laws, 1986, ch. 500, § 54]

**Editor's Notes —** Former § 37-3-48 provided guidelines and procedures for managing an instructional program in the public schools.

## § 37-3-49. Adoption by school district of instructional program and management system; paperwork reduction; exemption of certain district.

(1) The State Department of Education shall provide an instructional program and establish guidelines and procedures for managing such program in the public schools within the school districts throughout the state as part of the State Program of Educational Accountability and Assessment of Performance as prescribed in Section 37-3-46. Public school districts may (a) elect to adopt the instructional program and management system provided by the State Department of Education, or (b) elect to adopt an instructional program and management system which meets or exceeds criteria established by the State Department of Education for such. This provision shall begin with the courses taught in Grades K-8 which contain skills tested through the Mississippi Basic Skills Assessment Program and shall proceed through all secondary school courses mandated for graduation and all secondary school courses in the Mississippi end-of-course testing program. Other state core objectives

must be included in the district's instructional program as they are provided by the State Department of Education along with instructional practices, resources, evaluation items and management procedures. Districts are encouraged to adapt this program and accompanying procedures to all other instructional areas. The department shall provide that such program and guidelines, or a program and guidelines developed by a local school district which incorporates the core objectives from the curriculum structure are enforced through the performance-based accreditation system. It is the intent of the Legislature that every effort be made to protect the instructional time in the classroom and reduce the amount of paperwork which must be completed by teachers. The State Department of Education shall take steps to insure that school districts properly use staff development time to work on the districts' instructional management plans.

(2) The State Department of Education shall provide such instructional program and management guidelines which shall require for every public school district that:

(a) All courses taught in Grades K-8 which contain skills which are tested through the Mississippi Basic Skills Assessment Program, all secondary school courses mandated for graduation, and all courses in the end-of-course testing program shall include the State Department of Education's written list of learning objectives.

(b) The local school board must adopt the objectives that will form the core curriculum which will be systematically delivered throughout the district.

(c) The set of objectives provided by the State Department of Education must be accompanied by suggested instructional practices and resources that would help teachers organize instruction so as to promote student learning of the objectives. Objectives added by the school district must also be accompanied by suggested instructional practices and resources that would help teachers organize instruction. The instructional practices and resources that are identified are to be used as suggestions and not as requirements that teachers must follow. The goal of the program is to have students to achieve the desired objective and not to limit teachers in the way they teach.

(d) Standards for student performance must be established for each core objective in the local program and those standards establish the district's definition of mastery for each objective.

(e) There shall be an annual review of student performance in the instructional program against locally established standards. When weaknesses exist in the local instructional program, the district shall take action to improve student performance.

(3) The State Board of Education and the board of trustees of each school district shall adopt policies to limit and reduce the number and length of written reports that classroom teachers are required to prepare.

(4) This section shall not be construed to limit teachers from using their own professional skills to help students master instructional objectives, nor

shall it be construed as a call for more detailed or complex lesson plans or any increase in testing at the local school district level.

(5) Districts meeting the highest levels of accreditation standards, as defined by the State Board of Education, shall be exempted from the provisions of subsection (2) of this section.

**HISTORY: Laws, 1988, ch. 487, § 14; Laws, 1991, ch. 423, § 1; Laws, 1992, ch. 519, § 4; Laws, 2006, ch. 417, § 6; reenacted without changee, Laws, 2009, ch. 345, § 5; reenacted and amended, Laws, 2009, ch. 445, § 4; Laws, 2013, ch. 497, § 44, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Section 4 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), amended this section. Section 5 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education authorized to establish office of career education, see § 37-13-58.

Exemption from the provisions of subsection (2) of this section for school districts meeting Level 4 or 5 accreditation standards, see § 37-17-12.

## § 37-3-51. Notification of Department of Education of conviction of licensed person of certain felonies or sex offenses.

(1) Upon the conviction of any licensed personnel, as defined in Section 37-9-1, employed by a public school district or any person employed by a charter or private elementary or secondary school in a position that requires licensure in the public school districts, of any felony, or of a sex offense as defined in subsection (2) of this section, the district attorney or other prosecuting attorney shall identify those defendants for the circuit clerk. Each circuit clerk shall provide the State Department of Education with notice of the conviction of any such personnel of a felony or a sex offense. In addition, if the convicted person is an employee of a charter school, the circuit clerk must provide the same notice to the Mississippi Charter School Authorizer Board.

(2) "Sex offense" shall mean any of the following offenses:

(a) Section 97-3-65, Mississippi Code of 1972, relating to the carnal knowledge of a child under fourteen (14) years of age;

(b) Section 97-3-95, Mississippi Code of 1972, relating to sexual battery;

(c) Section 97-5-21, Mississippi Code of 1972, relating to seduction of a child under age eighteen (18);

(d) Section 97-5-23, Mississippi Code of 1972, relating to the touching of a child for lustful purposes;

(e) Section 97-5-27, Mississippi Code of 1972, relating to the dissemination of sexually oriented material to children;

(f) Section 97-5-33, Mississippi Code of 1972, relating to the exploitation of children;

(g) Section 97-5-41, Mississippi Code of 1972, relating to the carnal knowledge of a stepchild, adopted child, or child of a cohabitating partner;

(h) Section 97-29-59, Mississippi Code of 1972, relating to unnatural intercourse; or

(i) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.

(3) In addition, the State Department of Education is considered to be the employer of such personnel for purposes of requesting criminal record background checks.

**HISTORY: Laws, 1991, ch. 448, § 1; Laws, 2000, ch. 499, § 24; Laws, 2013, ch. 497, § 45, eff from and after July 1, 2013.**

**Editor's Notes —** Section 97-5-21 referred to in (2)(c) was repealed by Laws of 1998, ch. 549, § 7, eff from and after July 1, 1998. See now §§ 97-3-65, 97-3-95, 97–3–101, and 97-5-23.

**Cross References —** Mississippi Charter School Authorizer Board, generally, see § 37-28-1 et seq.

Applicability of this section to charter schools, see § 37-28-45.

Mississippi Sex Offenders Registration Law, see § 45-33-21 et seq.

## § 37-3-53. "Mississippi Report Card" on performance of students, public schools and charter schools.

(1)(a) Each school year, the State Board of Education, acting through the Office of Educational Accountability, shall develop a public school reporting system, or "Mississippi Report Card," on the performance of students and public schools, including charter schools, at the local, district and state level. In developing the report card, the Office of Educational Accountability shall collect school, district and state level student achievement data in the appropriate grades as designated by the State Board of Education in all core subjects, and compare the data with national standards to identify students' strengths and weaknesses. The Mississippi Report Card shall provide more than reports to parents on the level at which their children are performing; the report shall provide clear and comparable public information on the level at which schools, school districts and the state public education system are performing. The Office of Educational Accountability shall encourage local school districts and the general public to use Mississippi Report Card information along with local individual student data to assess the quality of instructional programs and the performance of schools and to plan and implement programs of instructional improvement.

(b) Beginning with the 1998-1999 school year, the Mississippi Report Card shall include information, as compiled by the Office of Compulsory School Attendance Enforcement, which demonstrates clearly the absenteeism and dropout rates in each school district, charter school and the state as a whole and whether those rates reflect a positive or negative change from the same information as reported in the previous year's Mississippi Report Card.

(c) Each local school district shall be required to develop and publish an annual report as prescribed by the State Board of Education. By November 1 of each year, as prescribed by the State Board of Education, the report shall be published in a newspaper having general circulation in the county and posted on the school district's website in a printable format. The public notice shall include information on the report's availability on the district's website, with the website address, and the location(s) in the school district where a copy of the report can be obtained.

(2) The State Department of Education may benefit from the use of performance data from the Mississippi Report Card in making evaluations under Section 37-19-9.

**HISTORY: Laws, 1992, ch. 419, § 14; Laws, 1994, ch. 581, § 9; Laws, 1998, ch. 566, § 8; Laws, 2011, ch. 442, § 4; Laws, 2013, ch. 494, § 5; Laws, 2013, ch. 497, § 46, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Section 5 of ch. 494, Laws of 2013, effective from and after July 1, 2013 (approved April 18, 2013), amended this section. Section 46 of ch. 497, Laws of 2013, effective from and after July 1, 2013 (approved April 17, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Joint Committee.

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2013, ch. 494, § 1, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Education Works Program.' "

Chapter 494, Laws of 2013, amended Sections 37-3-53, 37-16-7, 37-18-1 and 37-19-7 and enacted Sections 37-19-9 and 37-106-37.

**Cross References —** State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

State Board of Education generally, see § 37-1-1 et seq.

Applicability of provisions of this section to charter schools, see § 37-28-45.
Establishment of Office of Educational Accountability, see § 37-151-9.

## § 37-3-55. Repealed.

Repealed by its own terms by Laws, 1992, ch. 419, § 16, eff from and after July 1, 1997.

[Laws, 1992, ch. 419, § 16, eff from and after July 1, 1992, and shall stand repealed from and after July 1, 1997]

**Editor's Notes —** Former § 37-3-55 related to a student advancement pilot program for requiring uniform school terms for Grades 1 through 8.

## § 37-3-57. Repealed.

Repealed by its own terms by Laws, 1994, ch. 381, § 1, eff from and after July 1, 1996.

[Laws, 1992, ch. 419, § 17; Laws, 1994, ch. 381, § 1, eff from and after July 1, 1996]

**Editor's Notes —** Former § 37-3-57 related to pilot program for removing grade level designations for Grades 1 through 3.

## § 37-3-59. Summer kindergarten program for Grade 1 readiness; summer developmental program for Grades 1 through Grade 8.

(1) The school boards of all school districts are authorized to establish, maintain and operate, in connection with the kindergarten program of said district, a summer kindergarten program for Grade 1 readiness for those pupils making unsatisfactory progress during the regular kindergarten session. Said summer kindergarten program may be held within such school district or may be operated by two (2) or more adjacent school districts, or may be operated by a community/junior college or by a public or private university or college, pursuant to a contract approved by the State Board of Education. Transportation for students attending the summer kindergarten program shall be the responsibility of the local school district. The expense of establishing, maintaining and operating such summer kindergarten program may be paid from funds contributed or otherwise made available to the school district for such purpose from state appropriation, or otherwise, or from local district maintenance funds.

(2) The school boards of all school districts are authorized to establish, maintain and operate a summer developmental program for those students making unsatisfactory progress in Grades 1, 2, 3, 4, 5 or 6, during the first two (2) semesters. Such summer programs shall be open to those students who are not required to attend summer classes, but have had difficulty in the first two (2) trimesters, and shall be open to those students who desire enrichment. Said summer developmental programs may be held within such school district or

may be operated by two (2) or more adjacent school districts, or may be operated by a community/junior college or by a public or private university or college, pursuant to a contract approved by the State Board of Education. Transportation for students required to attend the summer program for Grades 1-6 shall be the responsibility of the local school district(s). The expense of establishing, maintaining and operating such summer program may be paid from funds contributed or made available to the school district for such purpose from state appropriation, or otherwise, or from local district maintenance funds.

(3) The school boards of all school districts are authorized to establish, maintain and operate a summer developmental program for those students making unsatisfactory progress in core curriculum courses in Grades 7 and 8, during the preceding school year. Said summer developmental programs may be held within such school district or may be operated by two (2) or more adjacent school districts, or may be operated by a community/junior college or by a public or private university or college, pursuant to a contract approved by the State Board of Education. Transportation for students required to attend the summer program for Grades 7 and 8 shall be the responsibility of the local school district. The expense of establishing, maintaining and operating such summer program may be paid from funds contributed or made available to the school district for such purpose from state appropriation, or otherwise, or from local district maintenance funds.

**HISTORY: Laws, 1992, ch. 419, § 18, eff from and after July 1, 1992.**

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References —** Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

## § 37-3-61. Alliance for Families programs; authorization; objectives.

The State Board of Education may provide for the establishment of an Alliance for Families program for the purpose of mobilizing public and parental support for education and to strengthen communication between the school, student and parents. The program's goal shall be to increase student success in Mississippi public school districts, K-12, by generating focused, effective parent involvement. The objectives of the program shall be as follows:

(a) To engage parents in supporting the schools and their children's education.

(b) To implement effective home-school communication systems which allow parents to be kept well informed about the school and their children's progress.

(c) To train school administrators on successful strategies for involving parents both at home and at school and in developing community support for the schools.

(d) To train teachers on successful strategies for communicating with parents and teaching parents to reinforce skills being learned at school.

(e) To promote reading as the key curricular activity for parental focus.

(f) To involve the business, medical and religious communities in supporting the schools through direct assistance, and to develop positive public relations for the schools in the community.

(g) Publication of a resource manual to assist schools and school districts in implementation of Alliance for Families program.

**HISTORY: Laws, 1992, ch. 419, § 19; Laws, 2013, ch. 497, § 47, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References —** Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

State Board of Education generally, see § 37-1-1 et seq.

## § 37-3-63. Alliance for Families program; procedure for establishment.

The procedure for establishing an Alliance for Families program in a district shall include, but shall not be limited to, the following:

(a) A district assessment which shall include an assessment of school personnel, levels of parent and community support, and the student population; research on school district demographics, attitudes, test scores and the need for parent involvement. Contact shall be made with key persons and school officials in each district and meetings held.

(b) A recommendation for a district Alliance for Families program shall be developed which responds to the school district's needs. The plan shall include the district's goals and objectives for implementation of its Alliance for Families program.

(c) A project coordinator shall be assigned to school districts based on student population and need, except that each school district shall have one (1) assigned coordinator. The role of the district coordinator shall be to provide support for the project and to ensure continuity of the program. Included in the district coordinator's responsibilities shall be visits to school sites, and meetings with principals, teachers and parents to offer assistance with implementation of the program.

**HISTORY: Laws, 1992, ch. 419, § 20, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows: "SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References** — Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

## § 37-3-65. Alliance for Families program; purpose.

It shall be the purpose of the Alliance for Families program to provide on a district level:

(a) Enhanced communication with participating principals and teachers;

(b) A parent involvement plan tailored to each school's needs;

(c) Assistance with the support and strategies necessary for successful program implementation;

(d) Support and assistance in other areas as needed to enhance schoolwide effectiveness.

**HISTORY: Laws, 1992, ch. 419, § 21, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows: "SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References —** Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

## § 37-3-67. Alliance for Families program; components.

Components of the Alliance for Families program shall include, but shall not be limited to:

(a) A signed parent pledge to assist with identification of ways to improve their child's performance;

(b) Folder/notebook that is sent home periodically, but not less than once per month, for parent's signature;

(c) Emphasis on "back to school night" or other family-oriented programs is key parent education events and as a beginning of establishing a partnership with the home;

(d) Reading focus programs which require home reading programs;

(e) Teacher, principal and parent training on how to participate most effectively in the program;

(f) Newsletters to parents on school programs, classroom curriculum, and how parents can reinforce what their child is learning;

(g) Home survey to assess parents' perceptions about communication, school programs and learning strategies for the home;

(h) Parent/teacher conferences which involve training parents and teachers in effective conferencing strategies and cooperative methods to achieve student success.

**HISTORY: Laws, 1992, ch. 419, § 22, eff from and after July 1, 1992.**

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References —** Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

## § 37-3-69. Alliance for Families program; measurement of success.

The success of the Alliance for Families program shall be measured in terms of progress on test scores, increase in participation of school events, increase in numbers of persons/school districts participating in the program, and other appropriate measures.

**HISTORY: Laws, 1992, ch. 419, § 23, eff from and after July 1, 1992.**

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References —** Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

## § 37-3-71. Alliance for Families program; participation by students and school districts; evaluation and report by State Board of Education.

All students in all school districts are eligible to participate in the Alliance for Families program. The number of school districts that may participate shall be determined by the amount of funding. The State Board of Education shall evaluate the Alliance for Families program in participating school districts and shall report to the Legislature and the Governor on or before August 1, 1993, identifying exemplary programs and making recommendations regarding methods and criteria for funding such programs.

**HISTORY: Laws, 1992, ch. 419, § 24, eff from and after July 1, 1992.**

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References** — Program specified in this section to be funded by state; local funding of program not exempt from tax increase limitations; and program not mandatory, see § 37-3-77.

## § 37-3-73. Rewarding of parents for involvement in school improvement; parent of year awards.

The State Board of Education shall establish an awards program to reward parents for becoming involved in school improvement efforts. A process shall be established which shall include, but not be limited to, the designation of a parent of the year in every school district in the state and the designation of one (1) "Parent of the Year" statewide.

**HISTORY: Laws, 1992, ch. 419, § 25, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

## § 37-3-75. Awards for exemplary performing public schools and school programs.

The State Board of Education shall establish and design a program of awards for exemplary performing public schools. The purpose of the awards program shall be to stimulate innovation and improvement in student achievement through the provision of awards to schools.

The board shall establish criteria and guidelines for making awards to exemplary performing public schools.

The board, in conjunction with the Governor, shall reward schools for exemplary performance and bring best practices to the attention of other schools. The awards shall include public recognition by the board and the Governor and the awarding of plaques, certificates, etc. for schools that perform well. The board shall have flexibility to recognize not only entire schools but also to recognize exemplary programs within a school.

**HISTORY: Laws, 1992, ch. 419, § 26, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

## § 37-3-77. State funding of programs provided for in §§ 37-3-55 through 37-3-71; expenditure of local funds for specified programs; implementation of specified programs deemed discretionary.

(1) It is the intention of the Legislature that local school districts shall bear no cost of implementing any of the provisions of this act contained in Sections 37-3-55 through 37-3-71 [See Editor's Note below]. Any monetary mandates resulting from the passage of these sections shall be contingent solely upon full funding by the State of Mississippi.

(2) In the event the school board of any school district shall choose, in its discretion, to expend local funds for the implementation of Sections 37-3-55 through 37-3-71, it is the intent of the Legislature that these expenditures shall not be considered funds expended for the purpose of implementing a "new program" mandated by the Legislature and any such funds shall not be generated from any taxes levied as an exemption from the tax increase limitation provisions prescribed in Sections 27-39-321 and 37-57-107.

(3) No state officer or state agency, authorized to issue official opinions interpreting the laws of this state, shall issue any opinions stating that the educational programs prescribed under the provisions of Sections 37-3-55 through 37-3-71, are mandatory. It is the intent of the Legislature in enacting such measures that these educational programs shall be discretionary as decided by local school boards.

**HISTORY: Laws, 1992, ch. 419, § 29, eff from and after July 1, 1992.**

**Editor's Notes** — Section 37-3-55 referred to in this section was repealed by Laws of 1992, ch. 419, § 16, effective from and after July 1, 1997.

Section 37-3-57, referred to in this section, was repealed by Laws of 1994, ch. 381, § 1, effective from and after July 1, 1996.

Reference to "this act" in subsection (1) of this section refers to Laws of 1992, ch. 419. For a complete list of code sections affected by Laws of 1992, ch. 419, see the Statutory Tables Volume, Table B, Acts of Legislature for 1992.

Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

## § 37-3-79. Curriculum Coordinator of Music and Art Education.

The State Department of Education shall employ a Curriculum Coordinator of Music and Art Education who holds certification as a music and/or art teacher. The supervisor's responsibilities shall include the oversight of the elementary music/art programs as well as secondary programs.

**HISTORY: Laws, 1994, ch. 409, § 1, eff from and after July 1, 1994.**

## § 37-3-81. School Safety Center.

The Department of Education, using only existing staff and resources, shall establish and maintain a School Safety Center, which shall operate a statewide information clearinghouse that: (a) provides assistance to school districts and communities during school crises; and (b) provides technical assistance, training and current resources to public school officials and parents who need assistance in researching, developing and implementing school safety plans and in maintaining a safe school environment. However, no monies from the Temporary Assistance for Needy Families grant may be used for the School Safety Center.

**HISTORY: Laws, 1994, ch. 607, § 10; Laws, 2001, ch. 486, § 2, eff from and after July 1, 2001.**

**Editor's Notes** — Laws of 2001, ch. 486, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.'"

**Cross References** — Temporary Assistance to Needy Families Program, see § 43-17-1 et seq.

## § 37-3-82. Mississippi Community Oriented Policing Services in Schools grant program established; purpose; use of funds.

(1) There is hereby established the Mississippi Community Oriented Policing Services in Schools (MCOPS) grant program in the State Department of Education to provide funding, pursuant to specific appropriation by the Legislature therefor, to assist law enforcement agencies in providing addi-

tional School Resource Officers to engage in community policing in and around primary and secondary schools. The MCOPS program shall authorize the State Department of Education to make grants to increase deployment of law enforcement officers in order (a) to increase or enhance community policing in this state, (b) that trained, sworn enforcement officers assigned to schools play an integral part in the development and/or enhancement of a comprehensive school safety plan, and (c) that the presence of these officers shall provide schools with a direct link to local law enforcement agencies.

(2) The MCOPS program shall meet the following requirements and standards:

(a) This program shall provide an incentive for law enforcement agencies to build collaborative partnerships with the school community and to use community policing efforts to combat school violence and implement educational programs to improve student and school safety.

(b) The additional School Resource Officers must devote at least seventy-five percent (75%) of their time to work in and around primary and secondary schools, in addition to the time that School Resource Officers are devoting in the absence of the MCOPS in Schools grant.

(c) Beginning with the 2019-2020 school year, the MCOPS in Schools program shall provide a minimum state contribution of up to Ten Thousand Dollars ($10,000.00) per officer position over the one-year grant period, to be matched from local funds on a 50/50 matching basis. Officers paid with MCOPS funds may be employed by the local law enforcement agency or by the local school district. MCOPS funds may be used to pay for entry-level salaries and benefits of newly trained additional School Resource Officers and may be used to pay the salaries and benefits of School Resource Officers employed prior to July 1, 2013. All jurisdictions that apply must demonstrate that they have primary law enforcement authority over the school(s) identified in their application and demonstrate their inability to implement this project without state assistance. Schools or law enforcement agencies may not reduce its overall federal, state, locally funded level of sworn officers (including other School Resource Officers or other sworn officers assigned to the schools) as a result of applying for or receiving MCOPS in Schools grant funding. MCOPS in Schools funding may be used to rehire sworn officers previously employed who have been laid off for financial reasons unrelated to the availability of the MCOPS in Schools grant, but must obtain prior written approval from the State Department of Education. MCOPS in Schools funding may be used to train school resource officers. In order to be eligible for such program, each local school board desiring to participate shall apply to the State Department of Education by May 31 before the beginning of the applicable fiscal year on forms provided by the department. The State Department of Education shall determine by July 1 of each succeeding year which local school districts have submitted approved applications for School Resource Officer funding.

(d) School Resource Officers (SROs) may serve in a variety of roles, including, but not limited to, that of a law enforcement officer/safety specialist, law-related educator, and problem-solver/community liaison. These officers may teach programs such as crime prevention, substance abuse prevention, and gang resistance as well as monitor and assist troubled students through mentoring programs. The School Resource Officer(s) may also identify physical changes in the environment that may reduce crime in and around the schools, as well as assist in developing school policies which address criminal activity and school safety. The application must also include a Memorandum of Understanding (MOU), signed by the law enforcement executive and the appropriate school official(s), to document the roles and responsibilities to be undertaken by the law enforcement agency and the educational school partner(s) through this collaborative effort. The application must also include a Narrative Addendum to document that the School Resource Officer(s) will be assigned to work in and around primary or secondary schools and provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

(e) All agencies receiving awards through the MCOPS in Schools program are required to send the School Resource Officer position(s) funded by this grant, to the Mississippi Law Enforcement Officers' Training Academy where they shall be required to participate in training through the Advanced Law Enforcement Rapid Response Training Program at the academy, with the cost to be defrayed from the MCOPS program. The MCOPS Office of the State Department of Education will reimburse grantees for training, per diem, travel, and lodging costs for attendance of required participants up to a maximum of One Thousand Two Hundred Dollars ($1,200.00) per person attending. Applicants receiving an MCOPS in Schools grant, will receive additional training information following notification of the grant award. The MCOPS in Schools training requirement must be completed prior to the end of twelve-month grant funding for officer positions.

(3) The State Department of Education shall promulgate rules and regulations prescribing procedures for the application, expenditure requirements and the administration of the Mississippi Community Oriented Policing Services in Schools (MCOPS) program established in this section, and shall make a report on the implementation of the MCOPS program with any recommendations to the 2020 Regular Session of the Legislature.

**HISTORY: Laws, 2013, ch. 546, § 1, eff from and after July 1, 2013; Laws, 2019, ch. 427, § 7, eff from and after July 1, 2019.**

**Editor's Note —** Laws of 2019, ch. 427, § 1, provides:
"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.'"

**Amendment Notes —** The 2019 amendment, in (2)(c), inserted "Beginning with the 2019-2020 school year" and substituted "minimum state contribution" for "maximum state contribution" in the first sentence and added the last three sentences of (c), and redesignated former (f) and (g) as (d) and (e); and substituted "2020 Regular Session of the Legislature" for "2014 Regular Session of the Legislature" at the end of (3).

## § 37-3-82.1. Schools unable to meet financial requirements for participation in MCOPS program authorized to develop alternative plans for student security.

In the event that a public school district is unable to participate in the MCOPS program due to the district's inability to meet the necessary financial requirements of the local fund match, the local school board of that school district may develop a plan for the security of its students, faculty and administration, which must be approved by the State Board of Education and the Mississippi Department of Public Safety prior to its implementation. The local school board may still apply for grants under the MCOPS program for training of security personnel employed by the school district.

**HISTORY: Laws, 2013, ch. 546, § 2, eff from and after July 1, 2013.**

## § 37-3-83. School Safety Grant Program; implementation of "Erin's Law Awareness" policy addressing sexual abuse of children; pilot program utilizing evidence-based curriculum to provide children stress and anxiety management skills; biennial refresher training on mental health and suicide prevention for all school employees.

(1) There is established within the State Department of Education, using only existing staff and resources, a School Safety Grant Program, available to all eligible public school districts, to assist in financing programs to provide school safety. However, no monies from the Temporary Assistance for Needy Families grant may be used for the School Safety Grant Program.

(2) The school board of each school district, with the assistance of the State Department of Education School Safety Center, shall adopt a comprehensive local school district school safety plan and shall update the plan on an annual basis.

(3) Subject to the extent of appropriations available, the School Safety Grant Program shall offer any of the following specific preventive services, and other additional services appropriate to the most current school district school safety plan:

(a) Metal detectors;

(b) Video surveillance cameras, communications equipment and monitoring equipment for classrooms, school buildings, school grounds and school buses;

(c) Crisis management/action teams responding to school violence;

(d) Violence prevention training, conflict resolution training, behavioral stress training and other appropriate training designated by the State Department of Education for faculty and staff; and

(e) School safety personnel.

(4) Each local school district of this state may annually apply for school safety grant funds subject to appropriations by the Legislature. School safety

grants shall include a base grant amount plus an additional amount per student in average daily attendance in the school or school district. The base grant amount and amount per student shall be determined by the State Board of Education, subject to specific appropriation therefor by the Legislature. In order to be eligible for such program, each local school board desiring to participate shall apply to the State Department of Education by May 31 before the beginning of the applicable fiscal year on forms provided by the department, and shall be required to establish a local School Safety Task Force to involve members of the community in the school safety effort. The State Department of Education shall determine by July 1 of each succeeding year which local school districts have submitted approved applications for school safety grants.

(5) As part of the School Safety Grant Program, the State Department of Education may conduct a pilot program to research the feasibility of using video camera equipment in the classroom to address the following:

(a) Determine if video cameras in the classroom reduce student disciplinary problems;

(b) Enable teachers to present clear and convincing evidence of a student's disruptive behavior to the student, the principal, the superintendent and the student's parents; and

(c) Enable teachers to review teaching performance and receive diagnostic feedback for developmental purposes.

(6) Any local school district may use audio/visual-monitoring equipment in classrooms, hallways, buildings, grounds and buses for the purpose of monitoring school disciplinary problems.

(7) As a component of the comprehensive local school district school safety plan required under subsection (2) of this section, the school board of a school district may adopt and implement a policy addressing sexual abuse of children, to be known as "Erin's Law Awareness." Any policy adopted under this subsection may include or address, but need not be limited to, the following:

(a) Methods for increasing teacher, student and parental awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse;

(b) Educational information for parents or guardians, which may be included in the school handbook, on the warning signs of a child being abused, along with any needed assistance, referral or resource information;

(c) Training for school personnel on child sexual abuse;

(d) Age-appropriate curriculum for students in prekindergarten through fifth grade;

(e) Actions that a child who is a victim of sexual abuse should take to obtain assistance and intervention;

(f) Counseling and resources available for students affected by sexual abuse; and

(g) Emotional and educational support for a child who has been abused to enable the child to be successful in school.

(8) As part of the school safety grant program, the State Department of Education shall establish three (3) pilot programs in six (6) school districts

utilizing an evidence-based curriculum to provide students in Grades K-5 with skills to manage stress and anxiety in order for them to be better equipped to handle challenges in a healthy way and build resiliency. The Mississippi Department of Mental Health shall be responsible for the selection of the content of the evidence-based curriculum. The results of this pilot program shall be measured and reported, and such results shall be used in consideration of the implementation of this curriculum statewide.

(9) As a component of the comprehensive local school district safety plan required under subsection (2) of this section, beginning in the 2019-2020 school year, the State Department of Education shall require local school districts to conduct, every two (2) years, refresher training on mental health and suicide prevention for all school employees and personnel, including all cafeteria workers, custodians, teachers and administrators. The Mississippi Department of Mental Health shall be responsible for the development and/or selection of the content of the training, which training shall be provided at no cost to school employees. School districts shall report completion of the training to the State Department of Education.

**HISTORY: Laws, 1994, ch. 607, § 11; Laws, 1997, ch. 525, § 1; Laws, 2001, ch. 486, § 3; Laws, 2011, ch. 442, § 10; Laws, 2014, ch. 491, § 11, eff from and after passage (approved April 15, 2014); Laws, 2019, ch. 427, § 3, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 2001, ch. 486, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.' "

Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.' "

**Amendment Notes —** The 2019 amendment inserted "behavioral stress training" in (3)(d); and added (8) and (9).

**Cross References —** School Safety Center established, see § 37-3-81.

Exemption of certain school safety plan documents containing preventive services listed in this section from Mississippi Public Records Act of 1983, see § 37-11-51.

## § 37-3-84. Confiscation of illegal firearms; reward.

(1) Each school district in the state may pay a reward not exceeding Five Hundred Dollars ($500.00) to any person who provides information that leads to the confiscation by the school district or a law enforcement agency of any illegal firearm on public school property.

(2) Each school district shall establish a policy necessary to protect the confidentiality of any person who provides such information leading to the confiscation of an illegal firearm under this section.

**HISTORY: Laws, 1997, ch. 525, § 2, eff from and after passage (approved April 10, 1997).**

## § 37-3-85. After-school mentoring programs.

(1) The Legislature finds that:

(a) Students who are serious behavior problems in school are at risk of becoming juvenile and adult offenders;

(b) Growing numbers of children live in conditions that place them at risk of school failure;

(c) The provision of school and support services to these children and their families by public and nonprofit agencies is fragmented and does not prepare these children to learn effectively and have a successful school experience;

(d) The lack of collaboration among schools, families, local agencies and other groups involved in family support and youth development activities results in the inefficient and ineffective use of resources to meet the needs of these children;

(e) Schools are dedicating an increasing amount of their time and resources to responding to disruptive and violent behavior rather than fulfilling their mission to challenge with high expectations each child to learn, to achieve and to fulfill his or her potential;

(f) Responding to the needs of students who are at risk of school failure and providing for a safe and secure learning environment are cost-effective because it enables the state to substitute preventive measures for expensive crisis intervention; and

(g) Differing local needs and local resources necessitate the development of locally generated, community-based plans that coordinate and leverage existing resources, not the imposition of uniform and inflexible, state-mandated plans.

(2) There is established within the State Department of Education the Support Our Students (S.O.S.) program. The purpose of the program is to award grants to neighborhood- and community-based organizations to establish local S.O.S. programs that provide high quality after-school mentoring activities for school-aged children and provide for comprehensive, collaborative delivery of mentoring services by public and nonpublic agencies to these children. These services shall be designed to enrich and make a positive impact on the lives of school-aged children. These after-school activities may include activities after the regular school day and activities on days that students are not required to attend school.

(3) The goals of the S.O.S. program are to:

(a) Reduce juvenile crime in local communities served by the program;

(b) Recruit community volunteers to provide positive adult role models for school-aged children and to help supervise after-school activities;

(c) Reduce the number of students who are unsupervised after school, otherwise known as "latchkey" children;

(d) Improve the academic performance of students participating in the program;

(e) Meet the physical, intellectual, emotional and social needs of students participating in the program and improve their attitudes and behavior; and

(f) Improve coordination of existing resources and enhance collaboration so as to provide services to school-aged children effectively and efficiently.

(4) As used in this section, "school-aged children" means children enrolled in kindergarten through the ninth grade.

(5) The State Department of Education shall develop and implement the Support Our Students (S.O.S.) program. The department shall:

(a) Sponsor a statewide conference each year for teams of interested representatives to provide background information and assistance regarding all aspects of the program;

(b) Disseminate information regarding the program to interested neighborhood and community groups;

(c) Develop and disseminate a request for applications to establish local S.O.S. programs;

(d) Provide initial technical assistance to grant applicants and ongoing technical assistance as grants are implemented;

(e) Administer funds appropriated by the Legislature;

(f) Monitor the grants funded;

(g) Revoke a grant if necessary or appropriate;

(h) Develop and implement a performance-based evaluation system to evaluate the program;

(i) Report on the program implementation to the Legislature and the Office of the Governor;

(j) Adopt any rules necessary to implement this section.

(6) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school districts may apply for a grant.

(7) Applicants for grants shall submit to the State Department of Education an application that includes the following information:

(a) Identification of one or more neighborhoods to be served by the local S.O.S. program, based on a needs assessment of existing conditions for school-aged children to be served. Data used in the needs assessment may include for each neighborhood to be served by a local program (i) dropout statistics, (ii) the number and percentage of school-aged children who participate in the federal subsidized lunch program, (iii) the number of suspensions and expulsions involving school-aged children, (iv) the number of children to be served, (v) the number and percentage of students with two (2) working parents or one (1) single parent to be served at a site; (vi) the incidence of juvenile crime in the neighborhood, and (vii) any other relevant or unique local demographic data.

Local authorities shall provide this or related information on a timely basis to local 501(c)(3) entities submitting applications to establish local S.O.S. programs;

(b) A three-year plan that addresses data used in the needs assessment and that includes proposed goals and anticipated outcomes of the local S.O.S. program. The plan shall be prepared after consultation with local after-school programs, schools, community organizations or groups which have as their purpose assisting or helping school-aged children who are at risk of failing in school or entering the juvenile justice system, or other appropriate groups. In addition, the three-year plan shall provide for regular collaborative efforts to seek input and advice from parents of the students being served and from other citizens who reflect the demographic conditions of the students being served;

(c) A statement of how grant funds would be used to address local problems and what other resources would be used to address the problems. This statement should include a list of services to be offered that are related to the goals and outcomes and should include plans for recruiting volunteers to assist in the program's activities; and

(d) A process for assessing on an annual basis the success of the local plan for addressing the goals of the local S.O.S. program.

(8) The department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local S.O.S. programs and administering grants to establish local S.O.S. programs.

In reviewing grant applications, the State Superintendent of Education shall consider the prevalence of under-served students and families in low-income neighborhoods and in isolated rural areas in the area for which the grant is requested, the severity of the local problems with regard to children at risk of school failure and with regard to school discipline, whether the proposed program meets state standards, and the likelihood that the locally designed plan will deal with the problems successfully. During the review process, the superintendent may recommend modifications in grant applications to applicants. The superintendent shall submit recommendations to the State Board of Education on which applicants should receive grants and the amount they should receive.

In selecting grant recipients, the State Board of Education shall consider (a) the recommendations of the superintendent, (b) the geographic location of the applicants, and (c) the demographic profile of the applicants. After considering these factors, the State Board of Education shall give priority to grant applications that will serve areas that have a high incidence of juvenile crime and that propose different approaches that can serve as models for other communities. The State Board of Education shall select the grant recipients prior to July 1, 1995, for local programs that will be in operation at the beginning of the 1995-1996 school year, and prior to July 1 and thereafter for the appropriate school year.

A grant recipient may request a modification of a grant or additional funds to implement a grant through the grant application process. The request shall be reviewed and accepted or rejected in the same manner as a grant application.

(9) The State Department of Education shall administer the grant program under the direction of the State Board of Education. The State Department of Education shall provide technical assistance to grant applicants and recipients.

(10) All agencies of the state and local government, including departments of human services, health departments, local mental health, and intellectual disability commissions, court personnel, law enforcement agencies and cities and counties shall cooperate with the State Department of Education and local school boards that receive grants in coordinating the S.O.S. program at the state level and in implementing the S.O.S. program at the local level.

(11) The Department of Education shall develop and implement an evaluation system, under the direction of the State Board of Education, that will assess the efficiency and effectiveness of the S.O.S. program. However, private schools shall not be included under the provisions of this section.

**HISTORY: Laws, 1995, ch. 609, § 1; Laws, 2010, ch. 476, § 9, eff from and after passage (approved Apr. 1, 2010).**

**Editor's Notes** — Laws of 1995, ch. 609, § 2, provides as follows:

"SECTION 2. All new programs authorized in this act are subject to the availability of funds specifically appropriated therefor by the Legislature."

Laws of 2009, ch. 489, preamble and § 1, effective April 6, 2009, provide:

"WHEREAS, studies about what happens to unsupervised children indicate that when left alone, these children: have higher absentee rates at school and lower academic test scores; exhibit higher levels of fear, stress, nightmares, loneliness and boredom; are one and seven-tenths (1/7/10) times more likely to use alcohol; and are one and six-tenths (1/6/10) times more likely to smoke cigarettes; and

"WHEREAS, data shows that in several communities throughout the United States, the violent juvenile crime rate soars in the hours immediately after school and that children are most likely to be victims of a violent crime committed by a nonfamily member between 2:00 p.m. and 6:00 p.m.; and

"WHEREAS, research indicates that children who attend high quality after-school programs have better peer relations, emotional adjustment, conflict resolution skills, grades and conduct in school compared to their peers who are not in after-school programs; and

"WHEREAS, children who attend after-school programs spend more time in learning opportunities, academic activities and enrichment activities and spend less time watching television than their peers; and

"WHEREAS, in one (1) study, children who attended an after-school program missed fewer days of school, had better homework completion, better school behavior and higher test scores; and

"WHEREAS, polls show that ninety-two percent (92%) of Americans believe there should be organized activities for children and teens during after-school hours; and

"WHEREAS, polls show that seventy-five percent (75%) of Americans are ready to either pay more taxes or to forego a tax cut to provide children with good early childhood development programs and quality after-school programs; and

"WHEREAS, as working parents can attest, child care concerns continue after children are old enough to go to school: a parent who is employed full time can be away from home an average of two thousand four hundred (2,400) hours a year, and children spend less than half of that time in school. If children participate in a quality school-age care program or another organized out-of-school time activity, parents can be assured that their children are safe and supervised; NOW, THEREFORE,

"SECTION 1. (1) There is created a task force to be known as the 'Mississippi After-School Initiative Task Force' to develop a plan to ensure quality after-school programs for every school-age child in the State of Mississippi. The task force shall make a report of its findings and recommendations, including any recommended legislation, to the Governor and Legislature before December 1, 2009.

"(2) The members of the task force should represent several diverse disciplines including, but not limited to: violence prevention; parents; park districts; special need populations; private foundations; civic and cultural organizations; community-based youth service providers; law enforcement; education; local voluntary organizations; faith-based communities; health; research institutions; child and youth advocacy; alcohol, tobacco and substance abuse prevention; and mental health. The task force shall be composed of the following eleven (11) members:

"(a) The State Superintendent of Public Education, or his or her designee

"(b) The Executive Director of the Mississippi Department of Human Services, or his or her designee;

"(c) The Executive Officer of the State Department of Health, or his or her designee;

"(d) The Chairman of the House of Representatives Education Committee, or his or her designee;

"(e) The Chairman of the Senate Education Committee, or his or her designee; and

"(f) Two (2) persons from each of the three (3) Supreme Court districts to be appointed by the Governor, one (1) of whom shall be experienced in early childhood development, runs an after-school program and an administrator of Head Start Program, for a total of six (6) members.

"(3) All members of the task force must be appointed within thirty (30) days after the effective date of this act. The task force shall hold its first meeting no later than August 15, 2009, on the call of the Governor at a place designated by him. At that first meeting, the task force shall elect from among its membership a chairman and other officers, if any, determined to be necessary. A majority of the membership of the task force shall constitute a quorum, and an affirmative vote of a majority of the task force shall be required for all actions taken. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(4) The task force shall make an assessment of the after-school services available in this state, including identification of the number of children and youth served in after-school programs and of the various funding programs currently supporting after-school programs. The task force shall recommend a plan for coordinating after-school services and for achieving the goal of providing after-school services to every school-age child in the State of Mississippi.

"(5) Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41, and the legislative members of the task force shall receive the compensation authorized for committee meetings when the Legislature is not in session. Payment of these expenses must be from funds made available specifically for such purpose by the Legislature or from any other public or private source.

"(6) The State Department of Education and the Mississippi Department of Human Services, acting jointly, shall provide appropriate staff support to assist the task force in carrying out its duties. Each department shall designate an appropriate employee to act as a point of contact for the provision of staff support to the task force.

"(7) Upon presentation of its report, the task force shall be dissolved."

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Superintendent of education and his duties generally, see §§ 37-3-9, 37-3-11.

Temporary Assistance to Needy Families Program, see § 43-17-1 et seq.

**Federal Aspects—** Organizations and nonprofit corporations that qualify as exempt from federal income tax on corporations, see 26 USCS § 501(c)(3).

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 264 et seq., 344, 345, 353 et seq.

**CJS.**

78A C.J.S., Schools and School Districts §§ 1082, 1086, 1089.

## § 37-3-87. Mississippi Better Sight for Better Learning Program; face-to-face comprehensive eye examination for children entering first grade if screening indicates need; student vision screening program.

(1) This section shall be known and may be cited as the "Mississippi Better Sight for Better Learning Program."

(2) The State Board of Education shall recommend a child entering first grade, whose eye screening indicates a need to have a face-to-face comprehensive eye examination, to be completed by an optometrist or ophthalmologist by January 1 of the child's first grade year. A principal, director or other person in charge of a public school shall collect from the child's parent or legal guardian, evidence of the child's face-to-face comprehensive eye examination, as provided by regulation of the State Board of Education, or a signed request by the parent or legal guardian of each student opting out of the face-to-face comprehensive eye examination. A face-to-face comprehensive eye examination that was performed before a child's initial enrollment in a public school shall be deemed to satisfy the requirement of this section. The State Board of Education shall adopt rules and regulations under the authority provided in this section to implement the provisions of this section.

(3) The State Department of Education is hereby authorized and empowered to establish a student vision screening program to make eye screening services available to students in Grades K-12 in the public schools in order to detect vision problems which can lead to academic problems. Such eye screening service shall be based on a process that is screening in nature, and not diagnostic, which is intended to identify with a reasonably high probability, students with a wide range of eye problems who should seek the services of an eye care professional for examination, diagnosis and corrective recommendation. Such eye screening service shall provide each student screened with a report of the student's screening results to be taken home. Each school shall be provided with a list of the students screened, and their results. Statistical summaries of the screening results shall be provided to each school, and composite statistics by school system, county or district shall be provided to the State Department of Education. The State Department of Education may contract with any legal entity to administer the student vision screening program on the school district level, and such contract shall be let on a competitive basis. State funding for the program shall only be available subject to appropriation by the Legislature.

(4) The school board of any local school district shall cooperate with the State Department of Education and any entity under contract with the department to implement the student face-to-face comprehensive eye examination or vision screening programs established under this section.

**HISTORY: Laws, 1996, ch. 440, § 1, eff from and after July 1, 1996; Laws, 2018, ch. 395, § 13; Laws, 2019, ch. 305, § 1, eff from and after July 1, 2019.**

**Amendment Notes —** The 2018 amendment deleted (3), which created an advisory committee for the student vision screening program and prescribed its composition and duties; and made a minor stylistic change.

The 2019 amendment added (1) and (2) and designated former paragraphs (1) and (2) as paragraphs (3) and (4); and inserted "face-to-face comprehensive eye examination or" in (4).

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Board of Health generally, see § 41-3-1 et seq.

## § 37-3-89. School discipline and classroom management courses; requirement; approval.

The State Board of Education, acting through the Commission on Teacher and Administrator Education, Certification and Licensure and Development, shall require each educator preparation program in the state, as a condition for approval, to include a course or courses on school discipline or classroom management as a required part of the teacher education program. All school discipline or classroom management courses offered by a teacher education program shall be approved by the Educator License Commission.

**HISTORY: Laws, 1998, ch. 544, § 10, eff from and after passage (approved April 13, 1998); brought forward without change, Laws, 2019, ch. 427, § 5, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 1998, ch. 544, which enacted the provisions of Sections 37-3-89, 37-3-91, 37-101-29, 37-149-7, 37-151-10 and 37-159-1 through 37-159-17, and amended the provisions of Sections 37-9-77, 37-17-8, 37-143-11 [repealed] and 37-149-1, may be cited as the "Mississippi Critical Teacher Shortage Act of 1998" pursuant to Section 37-159-1.

The preamble to Laws of 1998, ch. 544, provides in pertinent part:

"WHEREAS, in many rural areas and communities in the State of Mississippi, particularly in the Mississippi Delta, there exists a critical shortage of qualified teachers that continues to grow at an increasing rate as the number of teachers in those areas who are eligible for retirement escalates while fewer college students aspire to a career in teaching; and

"WHEREAS, the absence of a qualified teacher in every classroom in the state contributes to overall lower test scores for the State of Mississippi and will negatively impact the state's work force of tomorrow, made of our children of today; and

"WHEREAS, it is the intent of the Legislature, in passing this act, to immediately reverse this teacher shortage trend by offering attractive incentives to qualified persons who pursue a profession in teaching and agree to serve in those communities wherein the greatest need for teachers exists, thereby enabling every child in the State of Mississippi to receive a quality education: NOW, THEREFORE,"

Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.' "

**Amendment Notes —** The 2019 amendment brought the section forward without change.

**Cross References —** Commission on teacher and administrator education, certification and licensure and development, see § 37-3-2.

### § 37-3-91. Regional behavioral institutes; discipline and classroom management strategies; participation; standardized Memorandum of Understanding between mental health facilities and school districts to include referral protocols and standardized behavioral health screening.

(1) Subject to the availability of funds appropriated for such purpose, the State Department of Education may establish regional behavioral institutes for the purpose of providing state-of-the-art training to teachers and administrators in discipline and classroom management strategies and behavioral health screenings for students.

(2) Any school district may volunteer to participate in a regional behavioral institute. However, the State Department of Education may require a school district to participate in a regional behavioral institute if the department determines that such participation is in the best interest of the school district based upon:

(a) Complaints received and determined by the department to be valid which relate to disciplinary problems in the school district;

(b) Any visit to the school by representatives of the department which indicates disciplinary problems in the school district; or

(c) A review of reports submitted by a school district to the department which indicates disciplinary problems in the school district.

(3) Effective with the 2019-2020 school year, the Mississippi Department of Mental Health shall develop a standardized Memorandum of Understanding ("MOU") to be utilized by the Mississippi Department of Mental Health certified mental health providers and mental health facilities in providing mental health services to local school districts. The MOU shall include standardized behavioral health screening and referral protocols, procedures and forms to be utilized by the local school districts. Any standardized behavioral health screening and referral protocols shall only be performed on students with the approval of the student's parent or legal guardian. The Mississippi Department of Mental Health shall provide online training for appropriate school personnel to conduct initial behavioral health screenings of students experiencing or exhibiting behavioral stress or at risk of harming themselves or others.

**HISTORY: Laws, 1998, ch. 544, § 12, eff from and after passage (approved April 13, 1998); Laws, 2019, ch. 427, § 6, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 1998, ch. 544, which enacted the provisions of Sections 37-3-89, 37-3-91, 37-101-29, 37-149-7, 37-151-10 and 37-159-1 through 37-159-17, and amended the provisions of Sections 37-9-77, 37-17-8, 37-143-11 [repealed] and 37-149-1, may be cited as the "Mississippi Critical Teacher Shortage Act of 1998" pursuant to Section 37-159-1.

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"WHEREAS, the absence of a qualified teacher in every classroom in the state contributes to overall lower test scores for the State of Mississippi and will negatively impact the state's work force of tomorrow, made of our children of today; and

"WHEREAS, it is the intent of the Legislature, in passing this act, to immediately reverse this teacher shortage trend by offering attractive incentives to qualified persons who pursue a profession in teaching and agree to serve in those communities wherein the greatest need for teachers exists, thereby enabling every child in the State of Mississippi to receive a quality education: NOW, THEREFORE,"

Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.' "

**Amendment Notes —** The 2019 amendment added "and behavioral health screenings for students" at the end of (1); and added (3).

## § 37-3-93. School Crisis Management Program; quick response teams; toll-free telephone service for reporting school violence; certified threat assessment officers and duties thereof.

(1) Subject to the availability of funding specifically appropriated for such purpose, there is established a School Crisis Management Program under the State Department of Education. This program is to be initiated and executed by the department using only existing staff and resources. Under this program, the State Department of Education shall create an office making available a quick response team of personnel trained in school safety and crisis management to respond to traumatic or violent situations that impact students and faculty in the public schools in Mississippi. The required School Crisis Management Program shall operate in accordance with the following:

(a) The basic response team shall consist of those personnel designated by the State Superintendent of Public Education, or their designees, depending on the size of the school and the nature of the event.

(b) In order to access the services of a response team, the request must be made by the local school principal or the superintendent of schools, who shall make the request to the State Department of Education or its contact designee.

(c) A response team shall enter a school to work with students and faculty for a period of no more than three (3) days, unless otherwise requested by the school district.

(d) The State Department of Education, or its designee, shall operate a toll-free incoming wide area telephone service for the purpose of receiving reports of suspected cases of school violence and other traumatic situations impacting on students and faculty in the public schools.

(e) The request made by a school district to access the services of a response team following a school safety incident may seek a review of the local school district's safety plan, and the results of this evaluation may be published by the local school board in a newspaper with wide circulation in the district.

(f) Subject to the availability of funds specifically appropriated therefor by the Legislature, the expenses of the quick response teams and their administrative support shall be provided from state funds. The State Department of Education may apply for and expend funds for the support and maintenance of this program from private and other funding sources.

(2) Local school districts, school superintendents and principals may request and utilize the services of quick response teams provided for under this section; however, this section does not require school officials to request the services of quick response teams.

(3) As a component of the School Crisis Management Program, the Mississippi Office of Homeland Security shall develop a curriculum, train and certify threat assessment officers. A certified threat assessment officer shall conduct an annual inspection and threat assessment of each public school in the state. The threat assessment officer shall develop an improvement plan for each school inspected. The assessment shall include the inspection of surveillance equipment and building-specific floor plans. The findings of the inspection and threat assessment, including a copy of the improvement plan shall be provided to local law enforcement agencies and the local school board within four (4) weeks of completion.

**HISTORY: Laws, 2001, ch. 486, § 4; Laws, 2003, ch. 416, § 1; Laws, 2007, ch. 416, § 1; Laws, 2010, ch. 488, § 4, eff from and after July 1, 2010; Laws, 2019, ch. 427, § 4, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 2001, ch. 486, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.' "

Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.' "

**Amendment Notes —** The 2019 amendment inserted "required" in the last sentence in (1); and added (3).

**Cross References —** State superintendent of education and his duties generally, see §§ 37-3-9, 37-3-11.

## § 37-3-95. Junior Reserve Officer Training Corps (JROTC) statewide coordinator; powers and duties.

(1) Subject to the availability of funding for such purpose, the State Superintendent of Public Education shall employ within the State Department of Education or, in the alternative, contract with the Mississippi Military Department for a statewide coordinator for Junior Reserve Officer Training Corps (JROTC) programs in the public schools. If employed by the State Department of Education, the JROTC statewide coordinator must be an active or retired member of the military and must meet any additional qualifications that may be established for the position by the State Superintendent of Public Education or State Personnel Board. However, if for any reason within the two-year period beginning July 1, 2014, a new JROTC statewide coordinator is employed by the department, the employment of such individual shall not be

subject to the rules and regulations of the State Personnel Board, except as otherwise provided in Section 25-9-127(4).

(2) The following are the powers and duties of the JROTC statewide coordinator:

(a) To coordinate training of new JROTC instructors and continuing education programs for certified instructors;

(b) To facilitate communication between JROTC programs in the various public schools;

(c) To assist in organizing competitions among JROTC units from different high schools;

(d) To assist in the development of the JROTC curriculum;

(e) To compile information on scholarships available to JROTC participants and to solicit support for such scholarships;

(f) To assist in establishing support groups for parents of students participating in a JROTC program;

(g) To solicit and accept financial support for JROTC programs from private sector donors;

(h) To promote the involvement of JROTC units within their local communities;

(i) To facilitate interaction between JROTC units and the Mississippi National Guard and Mississippi Air National Guard;

(j) To promote, in general, the JROTC program in high schools throughout the state;

(k) To assist local schools with the application process for establishing new JROTC programs in high schools; and

(*l*) To perform such other duties relating to the JROTC program established by the State Superintendent of Public Education or State Board of Education.

**HISTORY: Laws, 2001, ch. 592, § 1; Laws, 2014, ch. 491, § 5, eff from and after passage (approved April 15, 2014).**

**Editor's Notes —** Laws of 2001, ch. 592, § 2, provides as follows:

"SECTION 2. The State Board of Education shall study the issues relating to the funding of Junior Reserve Officer Training Corps (JROTC) and the licensing of JROTC instructors. In studying the licensing issue, the board shall consider the credentials required for certification as a JROTC instructor. The board shall present a report on its findings concerning these issues along with any other issues related to JROTC to the Chairmen of the Education Committees of the House of Representatives and Senate before December 15, 2001, which report must include recommended legislation necessary to effectuate the board's recommendations relating to JROTC."

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Superintendent of education and his duties generally, see §§ 37-3-9, 37-3-11.

## § 37-3-97. Repealed.

Repealed by Laws, 2011, ch. 442, § 20, effective from and after July 1, 2011.

§ 37-3-97. [Laws, 2006, ch. 346, § 5; Laws, 2006, ch. 504, § 14; reenacted without change, Laws, 2009, ch. 345, § 6, eff from and after June 30, 2009.]

**Editor's Notes** — Former § 37-3-97 provided for a joint report on state teacher education programs.

## § 37-3-99. Repealed.

Repealed by its own terms, effective July 1, 2013.

§ 37-3-99. [Laws, 2006, ch. 554, § 1; Laws, 2007, ch. 511, § 1; Laws, 2008, ch. 418, § 1, eff from and after July 1, 2008.]

**Editor's Notes** — Former § 37-3-99 related to curriculum choices for students who are interested in direct entry into the workforce upon high school graduation and created a pilot program to redesign secondary schools to function as workforce development centers.

## § 37-3-101. Local school districts to adopt policy on student suicide prevention and provide in-service training on suicide prevention education for all school district employees.

(1) Each local school district shall adopt a policy on student suicide prevention. The policies shall be developed in consultation with school and community stakeholders, school-employed mental health professions, and suicide prevention experts, and shall, at a minimum, address procedures relating to suicide prevention, intervention and postvention. To assist districts in developing policies for student suicide prevention, the State Department of Education shall establish a model policy in consultation with the Mississippi Department of Mental Health for use by local school districts in accordance with this section.

(2) In the 2017-2018 school year, the State Department of Education shall require that local school districts conduct in-service training on suicide prevention education for all school district employees. The Mississippi Department of Mental Health will be responsible for development of the content of the training. This education may be accomplished through self-review of suitable suicide prevention materials.

**HISTORY: Laws, 2009, ch. 529, § 1; Laws, 2017, ch. 365, § 3, eff from and after July 1, 2017.**

## § 37-3-103. In-service training on suicide prevention education for newly employed school district employees.

Beginning with the 2017-2018 school year and annually thereafter, the State Department of Education shall require that local school districts conduct in-service training on suicide prevention education for all newly employed school district employees. The Mississippi Department of Mental Health will be responsible for development of the content of the training. This education may be accomplished through self-review of suitable suicide prevention materials.

**HISTORY: Laws, 2009, ch. 529, § 2; Laws, 2017, ch. 365, § 4, eff from and after July 1, 2017.**

### § 37-3-105. In-service training for all licensed grades K through 3 public school district teachers to include intensive, comprehensive, research-based reading methods.

Beginning with the 2009-2010 school year, the State Department of Education shall require that in-service training shall include an emphasis on intensive, comprehensive and researched-based reading methods for all licensed teachers teaching Grades K through 3 in a public school district. The education may be accomplished through self-review of suitable intensive, comprehensive and researched-based reading materials.

**HISTORY: Laws, 2009, ch. 529, § 3; Laws, 2013, ch. 497, § 48, eff from and after July 1, 2013.**

### § 37-3-107. Curriculum guidelines for implementation of school bus safety curriculum for grades K through 3.

The State Department of Education shall develop and issue curriculum guidelines to school districts relating to the implementation of a school bus safety curriculum for implementation in Kindergarten through Grade 3.

**HISTORY: Laws, 2011, ch. 481, § 4, eff from and after July 1, 2011.**

**Editor's Notes —** Chapter 481, Laws of 2011, which enacted this section, is known as "Nathan's Law."

# CHAPTER 4.

# MISSISSIPPI COMMUNITY COLLEGE BOARD

Sec.
37-4-1. Legislative findings and declaration of policy.
37-4-3. Establishment of board; composition; qualifications, appointment, terms of office and compensation of members; officers; director of state system of public junior and community colleges; general powers and duties of board.
37-4-4. Persons required to attend meetings of board; compensation.
37-4-5. Definitions.
37-4-7. Development by board of uniform employment contract for professional employees.
37-4-9. Conduct and funding of incentive certification program.
37-4-11. Transfer of Industrial Training Programs and postsecondary Adult Short-term Training Programs to Workforce Education Program; board to develop accountability system; annual report.
37-4-13. Mississippi Community College Board authorized to negotiate multi-year industrial training program commitments.
37-4-15. Board to conduct study of state funding structure for community and junior colleges.

## § 37-4-1. Legislative findings and declaration of policy.

The Legislature finds and determines that the social, cultural and economic well-being of the people of Mississippi, and hence the state, are enhanced by various educational experiences beyond the elementary and secondary school years. The Legislature hereby provides a means for the continuation of a system of community and junior colleges and declares the following to be the policy of the State of Mississippi:

(a) The general purpose of the community and junior colleges is to provide educational services for the people of its geographic area within the legal structure of the comprehensive community college. These services include the teaching and guiding of students who intend to transfer to senior colleges to pursue an academic degree and the teaching and guiding of career-oriented students in academic, technical and vocational programs. These services also include providing opportunities for continuing education in academic, technical, vocational and adult education, and providing leadership in civic, economic and cultural growth.

(b) Different geographic regions of the state have differing needs for human development.

(c) Local governance of the public community and junior colleges is an effective and efficient means of meeting the diverse local needs, as well as those needs and priorities established by the state.

(d) All post-high school youth and adults who have the motivation and ability to benefit from additional educational services and experiences should be provided such an opportunity.

(e) Community and junior colleges should provide quality instructional activities that are accessible geographically and financially to the people of the state, within the resources available for this purpose.

(f) Instructional activities should be related to the needs of the individual, region and state, and should be available throughout one's life regardless of prior educational experiences or attainment.

(g) An appropriate relationship between local district and state financial support of community and junior colleges shall be established.

(h) Coordination between public schools, community and junior colleges and universities shall complement the educational goals and attainments of individuals and the state.

(i) The Associate Degree should be a definitive and accepted higher educational degree, recognized for transfer to four-year institutions and for employment and promotion in business and industry.

(j) The community and junior colleges shall be the presumptive deliverers of public post-secondary training designed to meet the needs of individuals, business and state development objectives. This includes, but is not limited to, post-secondary training conducted under federal and state vocational and technical acts.

(k) Community and junior colleges shall be considered agencies of local government rather than agencies of the state.

**HISTORY: Laws, 1986, ch. 434, § 1, eff from and after July 1, 1986 (became law on April 4, 1986, without Governor's signature).**

**Cross References —** Education Achievement Council to work collaboratively with the State Board for Community and Junior Colleges to achieve state's goal of increasing educational attainment and skill levels to national average, see § 37-163-1.

## OPINIONS OF THE ATTORNEY GENERAL

Community and junior colleges, not being agencies of the state, do not fall under the purview of the Department of Information Technology Services for the acquisition of information technology equipment and services. Litchliter, Mar. 16, 2001, A.G. Op. #01-0139.

Expenditures of tax proceeds by community and junior colleges for electronic data processing equipment is subject to approval by the Mississippi Department of Information Technology Services. Litchliter, Apr. 12, 2002, A.G. Op. #02-0153.

Community and junior colleges are not covered by the state's leave law, but retain the authority to adopt their own leave policies so long as provisions therein for retirement credit do not exceed the state law provisions. Ready, Oct. 31, 2003, A.G. Op. 03-0331.

## RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

### § 37-4-3. Establishment of board; composition; qualifications, appointment, terms of office and compensation of members; officers; director of state system of public junior and community colleges; general powers and duties of board.

(1) From and after July 1, 1986, there shall be a Mississippi Community College Board which shall receive and distribute funds appropriated by the Legislature for the use of the public community and junior colleges and funds from federal and other sources that are transmitted through the state governmental organization for use by said colleges. This board shall provide general coordination of the public community and junior colleges, assemble reports and such other duties as may be prescribed by law.

(2) The board shall consist of ten (10) members of which none shall be an elected official. The Governor shall appoint two (2) members from the First Mississippi Congressional District, one (1) who shall serve an initial term of two (2) years and one (1) who shall serve an initial term of five (5) years; two (2) members from the Second Mississippi Congressional District, one (1) who shall serve an initial term of five (5) years and one (1) who shall serve an initial term of three (3) years; and two (2) members from the Third Mississippi Congressional District, one (1) who shall serve an initial term of four (4) years and one (1) who shall serve an initial term of two (2) years; two (2) members from the Fourth Mississippi Congressional District, one (1) who shall serve an initial term of three (3) years and one (1) who shall serve an initial term of four (4) years; and two (2) members from the Fifth Mississippi Congressional District, one (1) who shall serve an initial term of five (5) years and one (1) who shall serve an initial term of two (2) years. All subsequent appointments shall be for a term of six (6) years and continue until their successors are appointed and qualify. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be for the unexpired term only. All members shall be appointed with the advice and consent of the Senate.

(3) There shall be a chairman and vice chairman of the board, elected by and from the membership of the board; and the chairman shall be the presiding officer of the board. The board shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business.

(4) The members of the board shall receive no annual salary, but shall receive per diem compensation as authorized by Section 25-3-69, Mississippi Code of 1972, for each day devoted to the discharge of official board duties and shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by Section 25-3-41, Mississippi Code of 1972.

(5) The board shall name a director for the state system of public junior and community colleges, who shall serve at the pleasure of the board. Such director shall be the chief executive officer of the board, give direction to the board staff, carry out the policies set forth by the board, and work with the

presidents of the several community and junior colleges to assist them in carrying out the mandates of the several boards of trustees and in functioning within the state system and policies established by the Mississippi Community College Board. The Mississippi Community College Board shall set the salary of the director of the board. The Legislature shall provide adequate funds for the Mississippi Community College Board, its activities and its staff.

(6) The powers and duties of the Mississippi Community College Board shall be:

(a) To authorize disbursements of state-appropriated funds to community and junior colleges through orders in the minutes of the board.

(b) To make studies of the needs of the state as they relate to the mission of the community and junior colleges.

(c) To approve new, changes to and deletions of vocational and technical programs to the various colleges.

(d) To require community and junior colleges to supply such information as the board may request and compile, publish and make available such reports based thereon as the board may deem advisable.

(e) To approve proposed new attendance centers (campus locations) as the local boards of trustees should determine to be in the best interest of the district. Provided, however, that no new community/junior college branch campus shall be approved without an authorizing act of the Legislature.

(f) To serve as the state approving agency for federal funds for proposed contracts to borrow money for the purpose of acquiring land, erecting, repairing, etc., dormitories, dwellings or apartments for students and/or faculty, such loans to be paid from revenue produced by such facilities as requested by local boards of trustees.

(g) To approve applications from community and junior colleges for state funds for vocational-technical education facilities.

(h) To approve any university branch campus offering lower undergraduate level courses for credit.

(i) To appoint members to the Post-Secondary Educational Assistance Board.

(j) To appoint members to the Authority for Educational Television.

(k) To contract with other boards, commissions, governmental entities, foundations, corporations or individuals for programs, services, grants and awards when such are needed for the operation and development of the state public community and junior college system.

(*l*) To fix standards for community and junior colleges to qualify for appropriations, and qualifications for community and junior college teachers.

(m) To have sign-off approval on the State Plan for Vocational Education which is developed in cooperation with appropriate units of the State Department of Education.

(n) To approve or disapprove of any proposed inclusion within municipal corporate limits of state-owned buildings and grounds of any community college or junior college and to approve or disapprove of land use development, zoning requirements, building codes and delivery of governmental services applicable to state-owned buildings and grounds of any community college or junior college. Any agreement by a local board of trustees of a community college or junior college to annexation of state-owned property or other conditions described in this paragraph shall be void unless approved by the board and by the board of supervisors of the county in which the state-owned property is located.

**HISTORY: Laws, 1986, ch. 434, § 2; Laws, 1988, ch. 461; Laws, 2014, ch. 397, § 9, eff from and after July 1, 2014; Laws, 2019, ch. 436, § 1, eff from and after passage (approved March 29, 2019).**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The words "from the Fourth Mississippi Congressional District, who shall serve an initial term of five (5) years. All subsequent appointments shall be for a term of six (6) years and continue until their successors are appointed and qualify. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be for the unexpired term only. All members shall be appointed with the advice and consent of the Senate." were deleted from the end. The Joint Committee ratified the correction at its December 3, 1996, meeting.

**Editor's Notes** — Laws of 1986, ch. 434, § 16, effective July 1, 1986 (became law on April 4, 1986, without Governor's signature), provides as follows:

"SECTION 16. (1) Effective July 1, 1986, all employees of the Division of Junior Colleges of the State Department of Education shall be transferred according to the merger of their duties by this act. All such transfers shall be in accordance with the rules and regulations of the State Personnel Board.

"(2) All records, personnel, property and unexpended balances of appropriations, allocations or other funds of the Division of Junior Colleges of the State Department of Education shall be transferred to the appropriate agency according to the transfer of its functions under this act."

Laws of 2009, ch. 438, § 1 provides:

"(1) The Mississippi Department of Finance and Administration is authorized to transfer a portion of state-owned real property, located at 3825 Ridgewood Road, Jackson, Mississippi, to the State Board for Community and Junior Colleges for purposes of constructing a new facility, subject to funds becoming available to the board for that purpose. However, the property shall not be transferred until the requirements and conditions of subsections (2) and (3) of this section have been met.

"(2) The board, with approval of the Department of Finance and Administration, shall select a site for the building and grounds on the property described in subsection (1) of this section, and shall cause a survey to be made of the selected site. The board shall file a copy of the survey, along with documents evidencing approval of the board's site selection by the Department of Finance and Administration in the land records in the Office of the Chancery Clerk of the First Judicial District of Hinds County, Mississippi, and with the Secretary of State.

"(3) The conveyance authorized in this section may be subject to additional terms and conditions accepted and agreed upon by the Mississippi Department of Finance and Administration and the board."

Laws of 2009, ch. 489, § 2, effective April 6, 2009, provides:

"SECTION 2. (1) It is the intent of the Legislature and the expectation of each institution of higher learning and community and junior colleges in the state that all students in such institutions receive a quality education and graduate from such institutions. The Legislature also recognizes that annual performance reports show that a significant number of students underperform and fail to meet their goal of graduation.

"(2) To assist the Legislature in shaping public policy to improve student outcomes and educational opportunities for all students in such institutions of higher learning, there is established a task force to study and report on the graduation rates in the state institutions of higher learning and junior and community colleges.

"(3) The task force shall be composed of the following thirteen (13) members:

"(a) The Chairmen of the House and Senate Universities and Colleges Committees;

"(b) The Chairmen of the House and Senate Education Committees;

"(c) The State Superintendent of Public Education or his designee;

"(d) The Commissioner of Higher Education or his designee;

"(e) The Director of the State Board for Community and Junior Colleges or his designee;

"(f) The Chairman of the Board of Trustees of State Institutions of Higher Learning, the State Board for Community and Junior Colleges and the State Board of Education;

"(g) A representative of the Governor's Office appointed by the Governor;

"(h) A president of one (1) comprehensive university appointed by the Board of Trustees of State Institutions of Higher Learning; and

"(i) A president of one (1) historical black university appointed by the Board of Trustees of State Institutions of Higher Learning.

"(4) Appointments to the task force must be made within thirty (30) days after the effective date of this act. Within fifteen (15) days after the expiration of the period for making appointments, on a day to be designated by the Commissioner of Higher Education, the task force shall meet and organize by selecting from its membership a chairman and a vice chairman. The vice chairman also must serve as secretary and be responsible for keeping all records of the task force. A majority of the membership of the task force shall constitute a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the task force shall be required. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(5) The task force may contract for any professional services that it deems necessary to complete its work and shall tour any universities and community or junior colleges as it deems necessary. The Legislature shall appropriate sufficient funding to the Board of Trustees of State Institutions of Higher Learning for the contractual costs and travel associated with attending meetings and for the on-site visits to universities and community or junior colleges.

"(6) Members of the task force who are not legislators, state officials or state employees shall be compensated at the per diem rate authorized by Section 25-3-69 and reimbursed in accordance with Section 25-3-41 for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the task force may be paid while the Legislature is in session. Task force members may not incur per diem, travel or other expenses unless previously authorized by vote at a meeting of the task force, which action must be recorded in the official minutes of the meeting. Nonlegislative members may be paid from any funds made available to the task force for that purpose.

"(7) The task force shall compile data, study and report on measures that may be taken to improve graduation rates in the universities, community colleges and junior colleges.

"(8) The Commissioner of Higher Education shall provide appropriate staff to assist the task force with carrying out its duties. Before December 31, 2009, the task force shall submit to the Legislature and the Governor a written report of its findings and recommendations on measures to improve graduation rates in universities, community colleges and junior colleges. Upon presentation of its report, the task force shall be dissolved."

Laws of 2011, ch. 511, § 1, provides:

"SECTION 1. (1) The State Superintendent of Public Education, the Commissioner of Higher Education and the Executive Director of the State Board for Community and Junior Colleges, acting jointly, shall develop a comprehensive report and recommendations to the 2012 Legislature on the implementation and operations of 'Early College High Schools.' The report shall be submitted no later than January 2, 2012, and shall provide, at a minimum, the following:

"(a) A clear definition of what constitutes an Early College High School and how it enhances education and job-related opportunities;

"(b) The mission and intent of such schools;

"(c) The established criteria for admission;

"(d) An outline of the comprehensive costs of establishing and operating such a school, including transportation, and recommendations on how the state and local school districts should pay those costs;

"(e) A requirement to provide reports on the status and level of success of operating Early College High Schools in other states across the country;

"(f) Implications for student participation in sports programs and other extracurricular activities when attending an Early College High School;

"(g) An identification of and recommendations on any state laws and policies that may need amending to provide authority for the implementation and operation of such schools;

"(h) Recommendations and costs for state and local funding of transportation services for other forms of dual enrollment programs operated across the state; and

"(i) Any other information as determined to be necessary to benefit the scope and detail of the report.

"(2) The State Superintendent of Public Education, the Commissioner of Higher Education and the Executive Director of the State Board for Community and Junior Colleges, acting jointly, shall include specific recommendations on the establishment of an Early College High School Pilot Program in Mississippi in the report submitted to the 2012 Legislature."

Laws of 2011, ch. 511, § 2, effective April 26, 2011, provides:

"SECTION 2. (1) The State Board of Education, in conjunction with the Board of Trustees of State Institutions of Higher Learning and the State Board for Community and Junior Colleges, shall study and develop a comprehensive report and recommendations to the 2012 Legislature, by January 2, 2012, on the implementation, expansion and costs associated with the establishment of an Adult High School Diploma. The Chairmen of the House and Senate Education Committees, or their respective designees, and a representative appointed by the Governor, shall serve on the study panel for the development of an Adult High School Diploma.

"(2) The gubernatorial appointment to the study panel shall be made within thirty (30) days after the effective date of this act.

"(3) Legislative members of the study panel shall serve without compensation for their services, but may be reimbursed for necessary expense in attending to the actual business of the study panel from any available funds, as provided by law. Legislative members shall be reimbursed from the contingent expense fund of their respective house, but only with the specific approval of the Rules Committee of the respective house; however, no expense for attending meetings of the study panel may be paid while the Legislature is in session."

Laws of 2012, ch. 336, § 1, provides in part:

"SECTION 1. The Department of Finance and Administration, acting on behalf of the Mississippi Department of Public Safety, is authorized to donate and convey to Meridian Community College, certain real property and any improvements thereon, located at 841 Highway 19 North, in the City of Meridian, Lauderdale County, Mississippi, currently occupied by the Mississippi Highway Patrol, Troop H, and more particularly described as follows:

[For a complete description of the property, see Section 1 of Chapter 336, Laws of

2012.]

"(2) If at any time after the donation of the real property described in subsection (1) of this section Meridian Community College, ceases to use the real property for the purposes intended at the time of donation, the college shall forfeit its rights, title and interest in the real property, and all of the rights, title and interest in the real property shall revert back to the State of Mississippi.

"(3) The State of Mississippi shall retain all mineral rights to the real property donated under this section."

**Amendment Notes —** The 2019 amendment, effective March 29, 2019, in (2), deleted "and none shall be engaged in the educational profession" at the end of the first sentence, and deleted the former next-to-last sentence, which read: "No two (2) appointees shall reside in the same junior college district."

**Cross References —** Division of state into five congressional disricts, see § 23-15-1037.

Mississippi Community College Board to create accountability and transparency website; website to include, among other things, access to financial reports and audits, budgets, etc., see § 27-104-155.

Assistance by State Board of Community and Junior Colleges in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

Board to determine amount of fees authorized under §§ 75-60-15 and 75-60-27 after receiving recommendations from commission on proprietary school and college registration, see § 75-60-15.

## OPINIONS OF THE ATTORNEY GENERAL

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

## RESEARCH REFERENCES

**Am. Jur.**

15A Am. Jur. 2d, Colleges and Universities §§ 1 et seq.

**CJS.**

14A C.J.S., Colleges and Universities §§ 1, 6, 7, 9, 42, 44.

**Law Reviews.**

Adams, Through the looking glass and what the Supreme Court finds there: the political setting of United States v. Fordice. 62 Miss. L. J. 263, Winter, 1993.

Connell, The road to United States v. Fordice: what is the duty of public colleges and universities in former de jure states to desegregate? 62 Miss. L. J. 285, Winter, 1993.

Dunaway and Mills, United States v. Fordice: A summary of the parties' arguments. 62 Miss. L. J. 361, Winter, 1993.

Davis, The quest for equal education in Mississippi: the implications of United States v. Fordice. 62 Miss. L. J. 405, Winter, 1993.

## § 37-4-4. Persons required to attend meetings of board; compensation.

The Commissioner of Higher Education, or his designee, and one (1) member of the Board of Trustees of State Institutions of Higher Learning to be designated by the chairman of said board, shall attend all regular meetings of the Mississippi Community College Board. Said university representatives shall have no jurisdiction or vote on any matter within the jurisdiction of the board. The Commissioner of Higher Education and any designee who is a state employee shall receive no per diem for attending meetings of the board, but shall be entitled to actual and necessary expense reimbursement and mileage for attending meetings at locations other than Jackson, Mississippi. The designee of the Board of Trustees of State Institutions of Higher Learning shall receive per diem compensation as authorized by Section 25-3-69, Mississippi Code of 1972, for attending said meetings, and shall be entitled to reimbursement for all actual and necessary expense reimbursement and mileage, which shall be paid from funds appropriated to the Mississippi Community College Board.

**HISTORY: Laws, 1989, ch. 413, § 1; Laws, 2014, ch. 397, § 10, eff from and after July 1, 2014.**

**Cross References —** Commissioner of higher education, see § 37-101-7.

## § 37-4-5. Definitions.

(1) The terms "Junior College Commission" and "State Board for Community and Junior Colleges," whenever they appear in the laws of the State of Mississippi, mean the "Mississippi Community College Board."

(2) The term "High School Equivalency Diploma," whenever it appears in the laws of the State of Mississippi, means a high school diploma that has been approved by the Mississippi Community College Board.

(3) The terms "general educational development," "general education development" and "GED," whenever they appear in the laws of the State of Mississippi, mean a high school equivalency diploma as defined in subsection (2) of this section.

**HISTORY: Laws, 1986, ch. 434, § 18; Laws, 2011, ch. 358, § 1; Laws, 2014, ch. 397, § 1; brought forward without change, Laws, 2014, ch. 398, § 1; brought forward without change, Laws, 2016, ch. 351, § 2, eff from and after passage (approved Apr. 5, 2016).**

**Joint Legislative Committee Note —** Section 1 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014, 9:10 a.m.), amended this section. Section 1 of ch. 398, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014, 9:27 a.m.), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 398, Laws of 2014, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

## § 37-4-7. Development by board of uniform employment contract for professional employees.

The Mississippi Community College Board shall study the feasibility of developing and implementing a state adopted uniform contract within each community and junior college district. Such study shall include, but not be limited to, the following areas for consideration:

(a) Terms of employment;
(b) Salary schedules;
(c) Leave provisions;
(d) Health insurance benefits;
(e) Tenure;
(f) Retirement benefits.

**HISTORY: Laws, 1988, ch. 561, § 1; Laws, 2014, ch. 397, § 11, eff from and after July 1, 2014.**

## § 37-4-9. Conduct and funding of incentive certification program.

The Mississippi Community College Board is authorized to receive income from voluntary fees, contributions, donations, other forms of financial assistance, materials or manpower from persons, corporations, organizations and other sources, private or public, to be utilized and expended by the board in carrying out the incentive certification program mandated by the Work Force and Education Act of 1994 in Sections 37-151-63 through 37-151-75 and 37-153-1 through 37-153-13. Additionally, awards or scholarships to industry or to students or both are authorized.

**HISTORY: Laws, 1995, ch. 376, § 1; Laws, 2014, ch. 397, § 12, eff from and after July 1, 2014.**

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 120, 122.

**CJS.**
78A C.J.S., Schools and School Districts §§ 874-883.

## § 37-4-11. Transfer of Industrial Training Programs and postsecondary Adult Short-term Training Programs to Workforce Education Program; board to develop accountability system; annual report.

(1) The purpose of this section is to insure the uniform management, oversight and accountability of the state-funded Industrial Training Programs, and postsecondary Adult Short-Term Training Programs and Workforce Education Programs administered by the Mississippi Community College Board for adults provided to the citizens of Mississippi.

(2) Effective July 1, 1999, all state-funded Industrial Training Programs and postsecondary Adult Short-term Training Programs administered by and through the State Department of Education on June 30, 1999, shall be transferred to the Workforce Education Program of the Mississippi Community College Board. The Legislature shall appropriate annually to the Missis-

sippi Community College Board funds necessary to administer these programs.

(3) Effective July 1, 1999, all funds, unexpended balances, assets, liabilities and property of the State Department of Education which are used in the delivery of postsecondary Adult Short-term Training Programs and Industrial Training Programs, excluding funds, unexpended balances, assets, liabilities and property associated with the Research and Curriculum Unit at Mississippi State University, shall be transferred to the Workforce Education Program funds of the Mississippi Community College Board. The State Department of Education also shall transfer to the Mississippi Community College Board all positions and funds employed by the State Department of Education and community colleges which render industrial training, postsecondary adult short-term training or workforce education services, including the seven (7) administrative and support positions providing support to these programs. Sufficient staff positions shall be transferred from the State Department of Education, which will have a reduction in training and educational responsibilities by virtue of this section, to the Mississippi Community College Board to assure that the transferred responsibilities will be properly managed and administered. Any funds available to the State Department of Education for Industrial Training Programs and state-funded postsecondary Adult Short-term Training Programs which are subject to carryover shall be transferred to the Work Force Carryover Fund established by Chapter 498, Laws of 1995, for use by the Mississippi Community College Board, on or before August 15, 1999.

(4) The Mississippi Community College Board shall develop an accountability system that shall report and describe all classes taught in the area of workforce education, the number of persons taught in these classes, and the location and cost of each class taught. To assess the impact of these programs, the Mississippi Community College Board also shall report:

(a) Whether the needs of industry have been met through training program offerings;

(b) Any changes in the income of trainees between the completion of training and the date of the report;

(c) The number of jobs created and the number of jobs retained through the programs; and

(d) Trainee success in passing proficiency tests, where applicable.

This information shall be reported on a fiscal year basis and shall be provided to the House and Senate Education Committees before December 15 of each year.

**HISTORY: Laws, 1999, ch. 572, § 1; Laws, 2003, ch. 312, § 1; Laws, 2003, ch. 416, § 2; Laws, 2006, ch. 368, § 1; Laws, 2014, ch. 397, § 13, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Section 1 of ch. 312, Laws of 2003, effective from and after June 1, 2003, amended this section. Section 2 of ch. 416, Laws of 2003, effective from and after June 30, 2003, also amended this section. As set out above, this section reflects the language of Section 2 of ch. 416, Laws of 2003, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

## § 37-4-13. Mississippi Community College Board authorized to negotiate multi-year industrial training program commitments.

(1) In negotiating commitments under the Industrial Training Programs with industries seeking to locate or expand in Mississippi, the Mississippi Community College Board may enter into multi-year agreements for such training programs subject to the availability of funds appropriated therefor.

(2) The Mississippi Community College Board shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives listing the commitments that are made pursuant to subsection (1) of this section.

**HISTORY: Laws, 2000, 2nd Ex Sess, ch. 1, § 59; Laws, 2014, ch. 397, § 14, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.' "

## § 37-4-15. Board to conduct study of state funding structure for community and junior colleges.

(1) On or after July 1, 2002, the Mississippi Community College Board shall contract with a competent management consulting or accounting firm to study the state funding formula for community and junior colleges. The study shall accomplish the following specific outcomes:

(a) Evaluate the validity of the current student classifications used in the funding formula and make recommendations for change in the classification system if advisable;

(b) Evaluate the weights assigned to each student classification and make recommendations for change in the current weights if advisable;

(c) Identify the best management practices associated with the production of graduates in each of the student classifications and use such information as a basis for validating any changes in weights referred to in paragraph (b) of this subsection. The study of best practices shall also identify the amount of state funding that is used in program areas at schools exhibiting the best management practices.

(2) The report also shall recommend to the Mississippi Community College Board all reporting requirements and systems needed to collect information necessary to maintain a valid system of weights, student classification and the best practices associated with producing graduates most efficiently. All community and junior colleges shall cooperate with the Mississippi Community College Board in conducting this study and in providing all further information on an annual basis necessary to update the weights for programs established as a result of this study, the best management practices and the student classifications established as a result of this study.

(3) The Mississippi Community College Board shall report its findings to the Chairs of the House and Senate Education Committees and the House and Senate Appropriations Committees no later than December 15, 2002.

**HISTORY: Laws, 2002, ch. 581, § 1; Laws, 2014, ch. 397, § 15, eff from and after July 1, 2014.**

# CHAPTER 5.

# COUNTY BOARDS OF EDUCATION AND SUPERINTENDENTS

County Boards of Education. .................................................... 37-5-1
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## COUNTY BOARDS OF EDUCATION

Sec.
37-5-1. Establishment; composition; qualifications and election of members generally; counties in which board not to exist.
37-5-3. Residency requirements of members of board; qualifications of electors.
37-5-5. Repealed.
37-5-7. Time of election and terms of office of members of board.
37-5-9. Nominating petition; election; runoff election.
37-5-11 through 37-5-17. Repealed.
37-5-18. Election of members from special board of education districts in certain counties.
37-5-19. Filling of vacancies on board.
37-5-21 through 37-5-41. Repealed.

### § 37-5-1. Establishment; composition; qualifications and election of members generally; counties in which board not to exist.

(1) There is hereby established a county board of education in each county of the State of Mississippi. Said county board of education shall consist of five (5) members, one (1) of which, subject to the further provisions of this chapter and except as is otherwise provided in Section 37-5-1(2), shall be elected by the qualified electors of each board of education district of the county. Except as is otherwise provided in Section 37-5-3, each member so elected shall be a resident and qualified elector of the district from which he is elected.

(2) The county board of education shall apportion the county school district into five (5) single member board of education districts. The county board of education shall place upon its minutes the boundaries determined for the new five (5) board of education districts. The board of education of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of education of said county, said new district lines will thereafter be effective. The board of education of said county shall reapportion the board of education districts in accordance with the procedure described herein for the original apportionment of districts as soon as practicable after the results of the 2000 decennial census are published and as soon as practicable after every decennial census thereafter.

(3) In counties where the office of "administrative superintendent" as

defined in Section 37-6-3, Mississippi Code of 1972, has been abolished, there shall be no county board of education.

**HISTORY: Codes, 1942, § 6271-01; Laws, 1953, Ex Sess ch. 10, § 1; Laws, 1954, ch. 283, § 1; Laws, 1958, ch. 309, § 1; Laws, 1960, ch. 297, § 1; Laws, 1962, ch. 342, 1987, ch. 307, § 10; Laws, 1988, ch. 444, § 1; Laws, 2002, ch. 598, § 1, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2002, ch. 598, § 5 and 6.

**Cross References —** Application of this section to the term of office of members, see § 37-5-7.

Election of members from special board of education districts in certain counties, see §§ 37-5-18, 37-5-19.

Discontinuance and abolition of county board of education in certain counties, see § 37-7-723.

## JUDICIAL DECISIONS

**1. In general.**

County board of education, and its president, as agents of state, may appeal without giving bond. County Board of Education v. Smith, 239 Miss. 53, 121 So. 2d 139, 1960 Miss. LEXIS 266 (Miss. 1960).

## OPINIONS OF THE ATTORNEY GENERAL

It is the responsibility of the county board of supervisors to reapportion the board of education districts, which responsibility includes the payment of expenses related to that reapportionment. Clearman, Jan. 11, 2002, A.G. Op. #01-0783.

Even if school district boundaries are changed by the board of trustees pursuant to Section 37-5-1, an individual elected to the board on November 5, 2002, should serve the full term of six years and the remaining members of the board should continue to serve their existing terms as well. Pope, Nov. 15, 2002, A.G. Op. #02-0647.

## RESEARCH REFERENCES

**ALR.**

Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board. 105 A.L.R. Fed. 254.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 124 et seq.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

**Practice References.**

Education Law (Matthew Bender).

## § 37-5-3. Residency requirements of members of board; qualifications of electors.

No person who is a resident of the territory embraced within a municipal separate school district or a special municipal separate school district shall be eligible to be a member of the county board of education. Qualified electors residing within a municipal separate school district or special municipal separate school district shall not be eligible to vote or participate in the election of members of the county board of education.

The provisions of this section shall be applicable in the case of a special municipal separate school district and a line consolidated school district of which another county is the home county which together occupy all of the territory of a supervisors district of the county.

**HISTORY: Codes, 1942, § 6271-01; Laws, 1953, Ex Sess ch. 10, § 1; Laws, 1954, ch. 283, § 1; Laws, 1958, ch. 309, § 1; Laws, 1960, ch. 297, § 1; Laws, 1962, ch. 342, eff from and after passage (approved May 21, 1962).**

### RESEARCH REFERENCES

**ALR.**

Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board. 105 A.L.R. Fed. 254.

## § 37-5-5. Repealed.

Repealed by Laws, 1988, ch. 444, § 3, eff from and after August 9, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Codes, 1942, 6271-01; Laws, 1953, Ex Sess ch. 10, § 1; Laws, 1954, ch. 283, § 1; Laws, 1958, ch. 309, § 1; Laws, 1960, ch. 297, § 1; Laws, 1962, ch. 342]

**Editor's Notes —** Former § 37-5-5 pertained to at-large school board members.

## § 37-5-7. Time of election and terms of office of members of board.

(1) On the first Tuesday after the first Monday in May, 1954, an election shall be held in each county in this state in the same manner as general state and county elections are held and conducted, which election shall be held for the purpose of electing the county boards of education established under the provisions of this chapter. At such election, the members of the said board from Supervisors Districts One and Two shall be elected for the term expiring on the first Monday of January, 1957; members of the board from Supervisors Districts Three and Four shall be elected for a term expiring on the first Monday of January, 1959; and the member of the board from Supervisors District Five shall be elected for a term expiring on the first Monday of January, 1955. Except as otherwise provided in subsection (2), all subsequent

members of the board shall be elected for a term of six (6) years at the regular general election held on the first Monday in November next preceding the expiration of the term of office of the respective member or members of such board. All members of the county board of education as herein constituted, shall take office on the first Monday of January following the date of their election.

(2) On the first Tuesday after the first Monday in November, in any year in which any county shall elect to utilize the authority contained in Section 37-5-1(2), an election shall be held in each such county in this state for the purpose of electing the county boards of education in such counties. At said election the members of the said county board of education from Districts One and Two shall be elected for a term of four (4) years, the members from Districts Three and Four shall be elected for a term of six (6) years, and the member from District Five shall be elected for a term of two (2) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of six (6) years each. All members of the county board of education shall take office on the first Monday of January following the date of their election.

(3)(a) Current members of the Board of Trustees of the Greenwood Public School District serving on November 1, 2017, shall continue in office as the new County Board of Education of the Greenwood-Leflore School District until their successors are elected as follows:

(i) The two (2) appointed board members of the Greenwood Public School District whose terms are nearest to expiration shall expire on January 1, 2019, and thereafter become permanently elected positions to be filled by persons elected as board members from Supervisors Districts 2 and 3 in a November 2018 election held for that purpose, in the manner prescribed in Section 37-7-203, and the newly elected members will take office on January 1, 2019, for a term of four (4) years;

(ii) The final two (2) appointed board members of the Greenwood Public School District whose terms are the farthest removed from expiration shall expire on January 1, 2020, and thereafter become permanently elected positions to be filled by persons elected as board members from Supervisors Districts 4 and 5 in a November 2019 election held for that purpose, in the manner prescribed in Section 37-7-203, and the newly elected members will take office on January 1, 2020, for a term of four (4) years; and

(iii) One (1) appointed board member of the Greenwood Public School District whose term is next nearest to expiration shall expire on January 1, 2021, and thereafter become a permanently elected position to be filled by a person elected as a board member from Supervisors District 1 in a November 2020 election held for that purpose, in the manner prescribed in Section 37-7-203, and the newly elected members will take office on January 1, 2021, for a term of four (4) years.

(b) All subsequent members shall be elected for a term of four (4) years at the regular general election held on the first Monday in November next preceding the expiration of the term of office of the respective members, and shall take office on January 1 next succeeding the election.

(4) On the first Tuesday after the first Monday in November 2017, an election shall be held in Holmes County for the purpose of electing the county board of education in the new Holmes County Consolidated School District. At the election, the members of the said county board of education shall be elected from single member board of education districts, which shall be consistent with the supervisors district lines in the county, and shall be elected for an initial term of six (6) years. Subsequent elections for the Holmes County Board of Education shall be held on the first Tuesday after the first Monday in November 2023 and every four (4) years thereafter at the same time and manner as other general elections are held, and the member shall be elected for a term of four (4) years. All members of the county board of education in the new Holmes County Consolidated School District shall take office on the first Monday of January following the date of their election.

(5) On the first Tuesday after the first Monday in November 2023, an election shall be held in Chickasaw County for the purpose of electing the county board of education in the new Chickasaw County School District. The board of supervisors shall declare and designate posts for each member of the new board. At said election, the members of the said county board of education from Posts One and Two shall be elected for a term of four (4) years, the members from Posts Three and Four shall be elected for a term of three (3) years and the member from Post Five shall be elected for a term of two (2) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of four (4) years each. All members of the county board of education in the new Chickasaw County School District shall take office on the first Monday of January following the date of their election.

**HISTORY: Codes, 1942, § 6271-02; Laws, 1953, Ex Sess ch. 10, § 2; Laws, 1954, ch. 283, § 2; Laws, 1958, ch. 309, § 2; Laws, 1988, ch. 444, § 2; Laws, 2016, ch. 464, § 3; Laws, 2016, ch. 466, § 3; Laws, 2017, ch. 436, § 3, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** Section 3 of ch. 464, Laws of 2016, effective July 1, 2016 (approved May 10, 2016, 11:02 a.m.), amended this section. Section 3 of ch. 466, Laws of 2016, effective July 1, 2016 (approved May 10, 2016, 11:10 a.m.), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

**Cross References —** Greenwood-Leflore School District, see § 37-7-104.6.
Holms County Consolidated School District, see § 37-7-104.7.
Chickasaw County School District, see § 37-7-104.8.

## OPINIONS OF THE ATTORNEY GENERAL

Even if school district boundaries are changed by the board of trustees pursuant to Section 37-5-1, an individual elected to the board on November 5, 2002, should serve the full term of six years and the remaining members of the board should continue to serve their existing terms as well. Pope, Nov. 15, 2002, A.G. Op. #02-0647.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 76.

**CJS.**
78 C.J.S., Schools and School Districts §§ 159, 173-175.

## § 37-5-9. Nominating petition; election; runoff election.

The name of any qualified elector who is a candidate for the county board of education shall be placed on the ballot used in the general elections by the county election commissioners, provided that the candidate files with the county election commissioners, not more than ninety (90) days and not less than sixty (60) days prior to the date of such general election, a petition of nomination signed by not less than fifty (50) qualified electors of the county residing within each supervisors district. Where there are less than one hundred (100) qualified electors in said supervisors district, it shall only be required that said petition of nomination be signed by at least twenty percent (20%) of the qualified electors of such supervisors district. The candidate in each supervisors district who receives the majority of votes cast in the district shall be declared elected. If no candidate receives a majority of the votes cast at the election, a runoff shall be held between the two (2) candidates receiving the highest number of votes in the first election. The runoff election, in the event that such is necessary, shall be held three (3) weeks after the first election.

When any member of the county board of education is to be elected from the county at large under the provisions of this chapter, then the petition required by the preceding paragraph hereof shall be signed by the required number of qualified electors residing in any part of the county outside of the territory embraced within a municipal separate school district or special municipal separate school district. The candidate who receives the majority of votes cast in the election shall be declared elected. If no candidate receives a majority of the votes cast at the election, a runoff shall be held between the two (2) candidates receiving the highest number of votes in the first election. The runoff election, in the event that such is necessary, shall be held three (3) weeks after the first election.

In no case shall any qualified elector residing within a municipal separate school district or special municipal separate school district be eligible to sign a petition of nomination for any candidate for the county board of education under any of the provisions of this section.

**HISTORY: Codes, 1942, § 6271-03; Laws, 1953, Ex Sess ch. 10, § 3; Laws, 1954, ch. 283, § 3; Laws, 1958, ch. 309, § 3; Laws, 1978, ch. 392, § 1; Laws, 2009, ch. 470, § 1 (see Editor's Note); Laws, 2019, ch. 308, § 1, eff from and after July 1, 2019.**

**Editor's Notes —** By letter dated August 28, 2009, the United States Attorney General interposed no objection to the change in the general election date provided for in Chapter 470, Laws of 2009. As for the proposed changes from a plurality vote to a majority vote requirement for county school board members, for trustees for certain municipal separate school districts and for trustees for special municipal school districts, and the requirement that a runoff election be held three weeks after the election if no candidate received a majority, the U.S. Attorney General requested additional information from the state. After review of the information provided by the state, the U.S. Attorney General concluded that the state had not met its burden of showing that the proposed changes had neither a discriminatory purpose nor a discriminatory effect, and by letter dated March 24, 2010, objected to the proposed change from plurality to majority vote and the runoff requirement provided for in Chapter 470, Laws of 2009.

**Amendment Notes —** The 2019 amendment, in the first and second paragraphs, substituted "majority of votes" for "highest number of votes," and added the last two sentences.

### RESEARCH REFERENCES

**ALR.**

Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board. 105 A.L.R. Fed. 254.

**Am. Jur.**

67B Am. Jur. 2d, Schools § 73.

**CJS.**

78 C.J.S., Schools and School Districts §§ 168-171.

## §§ 37-5-11 through 37-5-17. Repealed.

Repealed by Laws, 1988, ch. 444, § 3, eff from and after June 15, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).

§ 37-5-11. [Codes, 1942, § 6271-03.5; Laws, 1958, ch. 309, § 4; Laws, 1960, ch. 298, §§ 1-3; Laws, 1966, ch. 404, § 1; Laws, 1968, ch. 396]

§ 37-5-13. [Codes, 1942, § 6271-03.5; Laws, 1958, ch. 309, § 4; Laws, 1960, ch. 298, §§ 1-3; Laws, 1966, ch. 404, § 1; Laws, 1968, ch. 396]

§ 37-5-15. [Codes, 1942, § 6271-03.7; Laws, 1966, ch. 431, §§ 1-8; Laws, 1968, ch. 397, § 1]

§ 37-5-17. [Codes, 1942, §§ 6271-21, 6271-22, 6271-23, 6271-24, 6271-25, 6271-26; Laws, 1966, ch. 428, §§ 1-6]

**Editor's Notes —** Former § 37-5-11 pertained to the election of county board of education members at large, and the manner of holding an election.

Former § 37-5-13 authorized the election of members of the county board of education at large.

Former § 37-5-15 pertained to the election of county at-large members in counties within the Yazoo-Mississippi Delta Levee District.

Former § 37-5-17 authorized the election of members from county at large in counties with a population between 47,000 and 50,000.

## § 37-5-18. Election of members from special board of education districts in certain counties.

In any county bordering on the Mississippi Sound and having therein at least four (4) municipal separate school districts, each member of the county board of education established by Section 37-5-1 for such county shall be elected from and shall be a resident and qualified elector in a special district determined in the following manner:

The board of education of such a county shall apportion the county into five (5) board of education districts in the territory outside the municipal separate school districts and these board of education districts shall be divided as nearly equal as possible according to population, incumbency and other factors heretofore pronounced by the courts. The board of education shall place upon its minutes the boundaries determined for the new five (5) board of education districts. The board of education of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of education of said county, said new district lines will thereafter be effective.

All incumbents now holding office within the district as presently constituted shall continue holding their respective offices provided they reside within the new district for the remainder of the term of office to which they have heretofore been elected and all members from the respective district shall be elected from the new board of education district constituted as herein provided in the same manner provided by law for the election of members of the county board of education. Any vacancies in the office, whether occasioned by redistricting or by other cause, shall be filled in the manner presently provided by law for the filling of vacancies.

**HISTORY: Laws, 1976, ch. 322; Laws, 2002, ch. 598, § 2, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2002, ch. 598 §§ 5 and 6.

### RESEARCH REFERENCES

**ALR.**

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

## § 37-5-19. Filling of vacancies on board.

Vacancies in the membership of the county board of education shall be filled by appointment, within sixty (60) days after the vacancy occurs, by the remaining members of the county board of education. Said appointee shall be selected from the qualified electors of the district in which the vacancy occurs, and shall serve until the first Monday of January next succeeding the next general election, at which general election a member shall be elected to fill the remainder of the unexpired term in the same manner and with the same qualifications applicable to the election of a member for the full term. In the event the school district is under conservatorship and no members of the county board of education remain in office, the Governor shall call a special election to fill the vacancies and said election will be conducted by the county election commission.

In the event the vacancy occurs more than five (5) months prior to the next general election and the remaining members of the county board of education are unable to agree upon an individual to be appointed, any two (2) of the remaining members may certify such disagreement to the county election commission. Upon the receipt of such a certificate by the county election commission, or any member thereof, the commission shall hold a special election to fill the vacancy, which said election, notice thereof and ballot shall be controlled by the laws concerning special elections to fill vacancies in county or county district offices. The person elected at such a special election shall serve for the remainder of the unexpired term.

**HISTORY: Codes, 1942, § 6271-04; Laws, 1953, Ex Sess ch. 10, § 4; Laws, 1960, ch. 299; Laws, 2013, ch. 331, § 2; Laws, 2013, ch. 363, § 2, eff July 16, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).**

**Editor's Notes —** This section was amended by two bills in 2013. The effective date of each of the two bills that amended this section, Chapter 331 (House Bill No. 975) and Chapter 363 (Senate Bill No. 2779), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bills were approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 331 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated July 9, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 331 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 331, so Chapter 331 became effective on the date of the response letter from the United States Attorney General, July 9, 2013.

Chapter 363 was not submitted before the *Shelby County* decision, but the Mississippi Attorney General's Office submitted Chapter 363 to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 16, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 363 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 363, so Chapter 363 became effective from and after July 16, 2013, the date of the United States Attorney General's response letter. Because that date is later than the date of the response letter for Chapter 331, the version of this section in Chapter 363 is the controlling version of this section.

As set out above, this section reflects the amendments to the section by Chapter 363.

### OPINIONS OF THE ATTORNEY GENERAL

Mississippi Supreme Court has held on numerous occasions that terms of statute dealing with specific subject control over terms of statute dealing with subject in general; as 23-15-839 is general statute, provisions of 37-5-19 are controlling as to procedure that must be followed to fill vacancy on county board of education. Crawford, August 29, 1990, A.G. Op. #90-0637.

Interim school board appointee, who was appointed to serve until first Monday of January, following special election to fill vacancy in accordance with Miss. Code Section 37-5-19, would likewise be authorized to hold over until his or her successor is selected and qualified to assume duties; therefore, interim appointee whose term expired on January 4, was entitled to continue to serve on school board until vacancy is again filled by board; however, in order to avoid any possible conflict of interest, it is suggested that interim appointee not participate in filling of vacancy. Berkley, Jan. 6, 1993, A.G. Op. #92-1001.

If two members of school board disagree with suggested appointee to board, and they certify said disagreement to county election commission, interim appointee would be authorized to hold over until special election is held in accordance with Miss Code Section 37-5-19. Berkley, Jan. 6, 1993, A.G.Op #92-1001.

Where vacancy is created on school board, appointment is to be filled in accordance with Miss. Code Section 37-5-19, and individual appointed to fill said vacancy will serve until new election can be held. Rohman, Feb. 2, 1993, A.G. Op. #93-0085.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 76.

**CJS.**

78 C.J.S., Schools and School Districts §§ 159, 173-175.

## §§ 37-5-21 through 37-5-41. Repealed.

Repealed by Laws, 1986, ch. 492, § 44, eff from and after July 1, 1987.

§ 37-5-21. [Codes, 1942, § 6271-05; Laws, 1953, Ex Sess ch. 10, § 5; Laws, 1955, Ex Sess ch. 47, § 1; Laws, 1960, ch. 308, § 2; Laws, 1962, ch. 343; Laws, 1966, ch. 405, § 1; Laws, 1970, ch. 523, § 1; Laws, 1972, ch. 392, § 1; Laws, 1975, ch. 488; Laws, 1979, ch. 449; Laws, 1983, ch. 544]

§ 37-5-23. [Codes, 1942, § 6271-07; Laws, 1953, Ex Sess ch. 10, § 7]

§ 37-5-25. [Codes, 1942, § 6271-07; Laws, 1953, Ex Sess ch. 10, § 7]

§ 37-5-27. [Codes, 1942, § 6274-01; Laws, 1953, Ex Sess ch. 16, § 1; Laws, 1954, ch. 267, § 1; Laws, 1962, ch. 378]

§ 37-5-29. [Codes, 1942, § 6271-06; Laws, 1953, Ex Sess ch. 10, § 6]

§ 37-5-31. [Codes, 1942, § 6274-03; Laws, 1953, Ex Sess ch. 16, § 3; Laws, 1985, ch. 391, § 3; Laws, 1985, ch. 460, § 1]

§ 37-5-33. [Codes, 1942, § 6274-07; Laws, 1953, Ex Sess ch. 16, § 7]

§ 37-5-35. [Codes, 1930, § 6844; 1942, § 6673; Laws, 1928, Ex Sess ch. 34; Laws, 1930, ch. 278]

§ 37-5-37. [Codes, 1930, § 6789; 1942, § 6632; Laws, 1924, ch. 283; Laws 1930, ch. 278; Laws, 1934, ch. 264]

§ 37-5-39. [Laws, 1973, ch. 415, § 1]

§ 37-5-41. [Laws, 1974, ch. 355; Laws, 1985, ch. 474, § 46; Laws, 1986, ch. 438, § 12]

**Editor's Notes —** Former § 37-5-21 provided for compensation of members of the county board of education.

Former § 37-5-23 pertained to bonding of the county board of education.

Former § 37-5-25 related to the recording of votes of members of the county board of education.

Former § 37-5-27 related to meetings of a county board of education.

Former § 37-5-29 related to the general powers and duties of county boards of education.

Former § 37-5-31 related to control of school funds by county boards of education.

Former § 37-5-33 permitted a county board of education to act as a central purchasing agency.

Former § 37-5-35 permitted a county board of education to set up and operate orphanage public schools.

Former § 37-5-37 authorized a county board of education to establish schools for Indians.

Former § 37-5-39 authorized school boards to turn recreational areas under their control over to county boards of supervisors or municipalities during the summer months.

Former § 37-5-41 authorized county boards of education and all public school boards of education to purchase liability insurance to cover their official actions.

## COUNTY SUPERINTENDENTS OF EDUCATION

Sec.

37-5-61. Creation; functions generally; election and term of office [Repealed effective January 1, 2019].

37-5-63. Establishment of position as appointive office [Repealed effective January 1, 2019].

37-5-65. Reestablishment of position as elective office [Repealed effective January 1, 2019].

37-5-66. Appointment of superintendent by county board of education in certain counties.

37-5-67. Authorization of appointment of county superintendent by county board of education in certain counties [Repealed effective January 1, 2019].

37-5-68. County superintendent to be appointed in certain counties; referendum on question of changing from elective method.

37-5-69. Abolition of office in certain counties; exception of certain counties from provisions concerning choosing of superintendent [Repealed effective January 1, 2019].

37-5-71. Selection and qualifications of superintendent; persons disqualified from participating in election of superintendent [Repealed effective January 1, 2019].

37-5-73. Repealed.

37-5-75. Filling of vacancy in office [Repealed effective January 1, 2019].

37-5-77 through 37-5-105. Repealed.

### § 37-5-61. Creation; functions generally; election and term of office [Repealed effective January 1, 2019].

(1) There shall be a county superintendent of education in each county.

(2) Said superintendent shall serve as the executive secretary of the county board of education, but shall have no vote in the proceedings before the board and no voice in fixing the policies thereof.

(3) In addition, said superintendent shall be the director of all schools in the county school district which are outside the municipal separate school districts.

(4) Said superintendent shall be elected at the same time and in the same manner as other county officers are elected and shall hold office for a term of four (4) years. However, in the event that a vacancy in the office of the superintendent of schools elected at the November 2015 general election shall occur before January 1, 2019, the office of superintendent of school shall immediately become an appointed position, and the local school board shall appoint the superintendent of the school district.

**HISTORY: Codes, 1942, §§ 6271-08, 6271-10, 6274-05; Laws, 1953, Ex Sess ch. 10, §§ 8, 10; ch. 16, § 5; Laws, 1954, ch. 275; Laws, 1958, ch. 297; Laws, 1960, ch. 308, § 3; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; ch. 407, § 1; Laws, 1968, ch. 384, § 1; ch. 398, § 1; ch. 399; Laws, 1970, ch. 372, § 1; Laws, 2013, ch. 497, § 49; Laws, 2017, ch. 301, § 3, eff from and after passage (approved Jan. 17, 2017).**

**Editor's Notes —** Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References —** Constitutional authorization of office of county superintendent of public education, see Miss. Const. Art. 8, § 204.

Grounds and procedure for removal of county superintendent, see § 37-1-7.

Certain counties excepted from the provisions of subsections (1) and (4) of this section, see § 37-5-69.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Relationship to other laws.

**1. In general.**

Candidate was not eligible to run for the office of county superintendent of education because he was a resident of a separate school district; the candidate did not present any evidence that he was a qualified elector of the county school district, the county superintendent of education served as the director of all schools within the county school district, which were outside the separate school district where the candidate resided. Basil v. Browning, 175 So. 3d 1289, 2015 Miss. LEXIS 543 (Miss. 2015).

School Superintendent was liable, as well as county School Board members, for violating conflict of interest statute, although Superintendent was prohibited by statute from participating in decisions such as one underlying alleged conflict of interest in this case, because § 37-11-27 names Superintendent as being among persons prohibited from making, authorizing, or entering any such contract; additionally, record reflected, without contradiction, that Superintendent did in fact execute contract and recommend payment of moneys under it. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

**2. Relationship to other laws.**

Section 5 of the Voting Rights Act of 1965 (42 USCS § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

Section 5 of the Federal Voting Rights Act of 1965 [42 USCS § 1973c] which prevents the enforcement of “any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting” different from that in effect on Nov. 1, 1964, unless the state of political subdivision complies with one of the section’s approval procedures, applied to the 1966 amendment to this section [Code, 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**

78 C.J.S., School and School Districts §§ 163-167 et seq.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

**Practice References.**

Education Law (Matthew Bender).

## § 37-5-63. Establishment of position as appointive office [Repealed effective January 1, 2019].

Notwithstanding the provisions of Section 37-5-61, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty percent (20%) of the qualified electors of such county, it shall be the duty of the board of supervisors of such county, within sixty (60) days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. However, where a Class 3 county having an area in excess of eight hundred twenty-five (825) square miles has a county unit school system comprising less than an entire county, the petition shall only be signed by electors residing within the county unit school district and only electors of said district shall vote on the proposition of appointing the county superintendent of education.

The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one of which shall be at the door of the county courthouse in each judicial district.

Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective.

No special election shall be held in any county under the provisions of this section more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

**HISTORY: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; Laws, 1968, ch. 384, § 1; ch. 398, § 1; Laws, 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).**

**Editor's Notes** — Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References** — Constitutional authorization of office of county superintendent of public education, see Miss. Const Art. 8, § 204.

Certain counties excepted from the provisions of this section, see § 37-5-69.

## JUDICIAL DECISIONS

**1. In general.**

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

## RESEARCH REFERENCES

**ALR.**

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

**Am. Jur.**

67B Am. Jur. 2d, Schools § 73.

**CJS.**

78 C.J.S., Schools and School Districts §§ 168-171.

## § 37-5-65. Reestablishment of position as elective office [Repealed effective January 1, 2019].

Where the office of county superintendent of education has been made appointive under the provisions of Section 37-5-63, the same may thereafter be made elective in such county by a petition filed and election held in the same manner provided in said section, all of the provisions of which shall be applicable to such proceedings. Where such change is made from the appointive method back to the elective method the same shall become effective at the date for the commencement of the term of office of other county offices next succeeding such election, and the county superintendent of education of such county shall be elected at the preceding election at the same time and in the same manner as other county officers are elected. Nothing herein shall be construed, however, to authorize the calling of a special election under any of the provisions of this section more often than once in any four years.

**HISTORY: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; Laws, 1968, ch. 384, § 1; ch. 398, § 1; Laws, 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).**

**Editor's Notes —** Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References —** Certain counties excepted from the provisions of this section, see § 37-5-69.

## JUDICIAL DECISIONS

**1. In general.**

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 73.

**CJS.**

78 C.J.S., Schools and School Districts §§ 168-171.

## § 37-5-66. Appointment of superintendent by county board of education in certain counties.

Effective with the term of office beginning January 1, 2016, in any Class 1 county bordering the Mississippi River having a population in excess of thirty thousand (30,000), according to the 2010 federal decennial census, wherein Mississippi Highway 49 and U.S. Highway 61 intersect, the county superintendent of education shall be appointed by the county board of education.

**HISTORY: Laws, 2015, ch. 458, § 1, eff from and after passage (approved Apr. 20, 2015).**

### § 37-5-67. Authorization of appointment of county superintendent by county board of education in certain counties [Repealed effective January 1, 2019].

The county superintendent of education shall be appointed by the county board of education:

(a) In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last federal decennial census;

(b) In any county bordering on the Gulf of Mexico or Mississippi Sound, having therein a test facility operated by the National Aeronautics and Space Administration;

(c) In any county bordering on the Alabama state line, traversed by the Tombigbee River, and in which is situated a senior institution of higher learning;

(d) In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or in part by U. S. Highways 49 and 51, and State Highways 16, 17 and 43 and the Natchez Trace;

(e) In any Class 4 county having population in excess of twenty-five thousand (25,000) according to the 1960 federal census, traversed by U. S. Highway 55 and wherein State Highways 12 and 17 intersect;

(f) In any county created after 1916 through which the Yazoo River flows;

(g) In any Class 4 county having a land area of six hundred ninety-five (695) square miles, bordering on the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U. S. Highway 45 and State Highway 14 intersect;

(h) In any county bordering on the Mississippi River wherein lies the campus of a land-grant institution or lands contiguous thereto owned by the institution;

(i) In any county lying within the Yazoo-Mississippi Delta Levee District, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand (21,000) according to the federal census of 1960;

(j) In any Class 3 county wherein is partially located a national forest and wherein U. S. Highway 51 and State Highway 28 intersect, with a 1960 federal census of twenty-seven thousand fifty-one (27,051) and a 1963 assessed valuation of Sixteen Million Six Hundred Ninety-two Thousand Three Hundred Four Dollars ($16,692,304.00); and

(k) In any Class 1 county wherein U. S. Highway 49 and State Highway 16 intersect, having a land area in excess of nine hundred thirty square miles.

**HISTORY: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; Laws, 1968, ch. 384, § 1; ch 398, § 1; Laws, 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).**

**Editor's Notes —** Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References —** Constitutional authorization of office of county superintendent of public education, see Miss. Const. Art. 8, § 204.

Certain counties excepted from the provisions of this section, see § 37-5-69.

## JUDICIAL DECISIONS

**1. In general.**

Section 5 of the Voting Rights Act of 1965 (42 USC § 1973c) is applicable to the 1966 amendment of this section [Code 1942, § 6271-08], and approval of that amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

Section 5 of the Federal Voting Rights Act of 1965 [42 USC § 1973c] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in effect on Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 6271-08] providing that in 11 specified counties the county superintendent of education should be appointed by the board of education. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

## OPINIONS OF THE ATTORNEY GENERAL

Since the amendments to this section provided for by Chapter 406 of Laws of 1966, Chapters 384 and 398 of Laws of 1968, and Chapter 372 of Laws of 1972 were never approved pursuant to Section 5 of the Voting Rights Act of 1965, they cannot be in effect; therefore, the office of superintendent of education of Hancock County, which county is covered by subsection (b) of this section, remains an elective office. Bourgeois, Nov. 5, 1995, A.G. Op. #95-0748.

Should provisions, such as those contained in this section, pending before the U.S. Department of Justice that mandate changing from elected to appointed superintendents of education in certain counties ever be approved by said department, such offices would, become appointive upon the expiration of the then current terms of the affected elected superintendents. Seal, Apr. 23, 2004, A.G. Op. 04-0166.

Should provisions, such as those contained in this section, be approved under Section 5 of the Voting Rights Act, no election would be required to effectuate a change from elected to appointed superintendents in the affected counties. Seal, Apr. 23, 2004, A.G. Op. 04-0166.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 168-171.

## § 37-5-68. County superintendent to be appointed in certain counties; referendum on question of changing from elective method.

Effective with the term of office beginning on January 1, 2012, the county superintendent of education shall be appointed by the county board of education in any county wherein is located the state's oldest state-supported university, having a population in excess of thirty-eight thousand (38,000) according to the 2000 federal decennial census and in which Mississippi Highways 6 and 7 intersect. Provided, however, if at any time prior to January 1, 2010, or ninety (90) days following August 10, 2009, whichever is earlier, a petition signed by not less than twenty percent (20%) or one thousand five hundred (1,500), whichever is less, of the registered, qualified electors of such county, exclusive of the municipal separate school district boundaries, is filed with the county board of education requesting that a referendum be called on the question of changing from the elective method of selecting the county superintendent of education to the appointive method, then the county board of education shall adopt, not later than the next regular meeting, a resolution calling a referendum to be called and held within the county school district boundaries upon the question. The referendum shall be scheduled for not more than six (6) weeks after the date such petition is filed with the board. When a referendum has been called, notice of the referendum shall be published at least five (5) days per week, unless the only newspaper published in the county school district is published less than five (5) days per week, for at least three (3) consecutive weeks, in at least one (1) newspaper published in the county school district. The notice shall be no less than one-fourth (¼) page in size, and the type used shall be no smaller than eighteen (18) point and surrounded by a one-fourth-inch solid black border. The notice may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The first publication of the notice shall be made not less than twenty-one (21) days before the date fixed for the referendum, and the last publication shall be made not more than seven (7) days before that date. If no newspaper is published in the county school district, then the notice shall be published in a newspaper having a general circulation in the county school district. The referendum shall be held, as far as is practicable, in the same manner as other referendums and elections are held in the county. At the referendum, all registered, qualified electors of the county school district, exclusive of the municipal separate school district boundaries, may vote. The ballots used at the referendum shall have printed thereon a brief statement of the purpose of the referendum and the words "FOR CHANGING FROM THE ELECTIVE TO THE APPOINTIVE METHOD OF SELECTING THE COUNTY SUPERINTENDENT OF EDUCATION," and "AGAINST CHANGING FROM THE ELECTIVE TO THE APPOINTIVE METHOD OF SELECTING THE COUNTY SUPERINTENDENT OF EDUCATION." The voter shall vote by placing a cross (X) or checkmark (√) opposite his choice on the proposition. If a majority of the registered, qualified electors of the county school district who vote in the referendum vote in favor of the question, then the change in selection method shall be approved. However, if a majority of the registered, qualified electors who vote in the referendum vote against the question, the change in selection method shall not be approved.

**HISTORY: Laws, 2009, ch. 431, § 1, eff Aug. 10, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section).**

**Editor's Notes —** On August 10, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Laws of 2009, ch. 431.

## § 37-5-69. Abolition of office in certain counties; exception of certain counties from provisions concerning choosing of superintendent [Repealed effective January 1, 2019].

In any county organizing a countywide municipal separate school district after the first day of January, 1965, the office of county superintendent of education is hereby abolished. There is excepted from the provisions of subsections (1) and (4) of Section 37-5-61, Sections 37-5-63 through 37-5-67, subsection (1) of Section 37-5-73, and Section 37-5-75, any county of the first class which has a land area of less than four hundred fifty square miles, and has located therein a municipality of more than fifteen thousand population, according to the 1950 federal decennial census.

**HISTORY: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; Laws, 1968, ch. 384, § 1; ch. 398, § 1; Laws, 1970, ch. 372, § 1, eff from and after passage (approved April 1, 1970).**

**Editor's Notes —** Section 37-5-73 referred to in this section was repealed by Laws of 1986, ch. 492, § 84, eff from and after July 1, 1987. For present similar provisions, see §§ 37-5-71 and 37-9-13.

Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the

county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References** — Constitutional authorization for abolition of office of county superintendent of education, see Miss. Const. Art. 8, § 204.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 73.

## § 37-5-71. Selection and qualifications of superintendent; persons disqualified from participating in election of superintendent [Repealed effective January 1, 2019].

(1) The county superintendents of education shall be elected in the manner prescribed by the provisions of this chapter, unless the school district is being reconstituted as provided in Section 37-17-13 or unless such office be made appointive as provided in this chapter, in which case the county superintendent shall be appointed by the county board of education or by the trustees of a separate school district embracing an entire county with a population of fifteen thousand (15,000) or less, as provided in subsection (2) of Section 37-7-203. However, in the event that a vacancy in the elective office of the superintendent of schools elected at the November 2015 general election shall occur before January 1, 2019, the office of superintendent of school shall immediately become an appointed position, and the local school board shall appoint the superintendent of the school district. In all cases he shall have such qualifications as prescribed by Section 37-9-13 and receive such compensation as established under Section 37-9-37.

(2) All qualified electors residing within any municipal separate or special municipal separate school district shall not vote in the election for the county superintendent of education:

(a) In all counties of the second class which have a population, according to the 1960 federal decennial census of at least thirty-three thousand (33,000) and less than thirty-four thousand (34,000), and having a city located therein which is the Southern Division of the A.T. S.F. Railroad Company;

(b) In all counties of the fourth class which have a population, according to the 1960 federal decennial census, in excess of twenty-six thousand (26,000) and less than twenty-seven thousand (27,000), and having located therein the Mississippi State University of Agriculture and Applied Science;

(c) In all counties of the first class which have a population, according to the 1960 federal decennial census, in excess of forty-six thousand (46,000) and less than forty-seven thousand (47,000), and having located therein the Mississippi University for Women;

(d) In any county bordering on the Mississippi Sound and having a population in excess of one hundred thousand (100,000), according to the 1960 federal decennial census, and having an assessed valuation in excess of Seventy Million Dollars ($70,000,000.00);

(e) In any county having a population in excess of eight thousand (8,000) and less than nine thousand (9,000), and having an assessed valuation in excess of Five Million Dollars ($5,000,000.00) but less than Six Million Dollars ($6,000,000.00) in 1960;

(f) In any county having a population in excess of twenty-two thousand (22,000) and less than twenty-three thousand (23,000) in 1960, and having a total assessed valuation in excess of Thirteen Million Dollars ($13,000,000.00) in 1960;

(g) In any county having a population in excess of fifty-nine thousand (59,000) but less than sixty thousand (60,000), according to the 1960 federal decennial census;

(h) In any county bordered on the east by the Alabama line and on the south by the Mississippi Sound;

(i) In any county where Mississippi Highway 35 crosses U.S. Highway 80 and whose population, according to the 1960 regular census, was between twenty-one thousand (21,000) and twenty-two thousand (22,000), and in which there are located four (4) or more chicken packing plants, one (1) zipper plant and one or more factories manufacturing Sunbeam electrical appliances;

(j) In any county having a population of twenty-six thousand one hundred ninety-eight (26,198) according to the 1970 census wherein Highways 51 and 84 intersect;

(k) In any county having a municipal separate school district lying therein, having a population in excess of twenty-one thousand (21,000) but less than twenty-one thousand five hundred (21,500), according to the 1960 decennial census, and having a combined assessed valuation in 1963 in excess of Sixteen Million Nine Hundred Thousand Dollars ($16,900,000.00) but less than Seventeen Million Dollars ($17,000,000.00) according to the State Tax Commission's compilation;

(*l*) In any county where Mississippi Highway 15 crosses Mississippi Highway 16, whose population was more than twenty thousand (20,000) and less than twenty-one thousand (21,000), according to the regular 1960 census, and within which there is located a Choctaw Indian reservation and school operated by the United States government;

(m) In any county where U.S. Highway 45W Alternate intersects Mississippi Highway 50, and having a population of eighteen thousand nine hundred thirty-three (18,933), according to the 1960 federal census;

(n) In any county having a population in excess of forty thousand five hundred (40,500), according to the 1960 federal decennial census, wherein U.S. Highways 78 and 45 intersect, and wherein there is a United States fish hatchery;

(o) In any county being traversed by Mississippi Highway 15 and U.S. Interstate Highway 20;

(p) In all counties wherein there is located a national military park and a national cemetery;

(q) In any county where U.S. Highway 82 crosses U.S. Interstate Highway 55 and having a population of twelve thousand three hundred eighty-seven (12,387) according to the 1990 federal decennial census;

(r) In any county where U.S. Highway 49E and U.S. Highway 82 intersect, and having a population of thirty-seven thousand three hundred forty-one (37,341) according to the 1990 federal decennial census;

(s) In any county bordering the Mississippi River on the west and with a population of less than thirty-one thousand (31,000), according to the 2000 federal decennial census, and with a county seat in which U.S. Highway 49 and U.S. Highway 61 intersect.

In any such county, however, the county superintendent of education may be a resident of a municipal separate school district or special municipal separate school district.

(3) The qualified electors residing within the municipal separate school districts shall not participate in the election of the county superintendent of education:

(a) In any county having a population of more than twenty-seven thousand (27,000) and less than twenty-eight thousand (28,000) and containing therein a municipality having a population in excess of three thousand (3,000), according to the 1960 federal decennial census;

(b) In any Class 1 county wherein is located a state-supported university and a National Guard camp, and in which Interstate Highway 59 and U.S. Highway 49 intersect;

(c) In any Class 4 county having two (2) judicial districts, wherein is partially located a national forest, and wherein Mississippi Highways 8 and 15 intersect;

(d) In any Class 2 county, the southern boundary of which partially borders on the State of Louisiana, traversed by U.S. Highway 98 which intersects Mississippi Highway 13, with a land area of five hundred fifty (550) square miles and having a population of twenty-three thousand two hundred ninety-three (23,293) in the 1960 federal decennial census;

(e) In any county bordering on the Gulf of Mexico or the Mississippi Sound having therein a test facility operated by the National Aeronautics and Space Administration;

(f) In any county having a population in excess of twenty-seven thousand one hundred seventy-nine (27,179) according to the 1970 federal decennial census, wherein U.S. Highways 45 and 72 intersect; and

(g) In any Class 1 county bordering on the Pearl River in which U.S. Highway 80 intersects Mississippi Highway 18 and having a population, according to the federal decennial census of 1970, of forty-three thousand nine hundred thirty-three (43,933).

(4) The county superintendent of education, with the approval of the county board of education by its first having adopted a resolution of approval and spread upon its minutes, shall be elected from the county at large, exclusive of the municipal separate school district boundaries:

(a) In any county bordering on the State of Tennessee having a land area of seven hundred ten (710) square miles, wherein is located part of a national forest, and wherein U.S. Highway 78 and Mississippi Highway 7 intersect;

(b) In any Class 4 county wherein is located the state's oldest state-supported university, in which Mississippi Highways 6 and 7 intersect. Provided, however, that if the method of selecting the county superintendent of education in such county is changed from an elective method to an appointive method, pursuant to the provisions of Section 37-5-68, this paragraph (b) shall stand repealed; and

(c) In any county having a population in excess of seventeen thousand (17,000) and less than eighteen thousand (18,000), according to the 1970 federal decennial census, wherein Mississippi Highways 6 and 9 intersect.

(5) In any county having a municipality of between forty-nine thousand (49,000) and fifty thousand (50,000) population according to the 1960 federal census, and adjoining the Alabama line, wherein U.S. Highways 80 and 45 intersect, the qualified electors residing within any municipal separate school district shall not participate in the election of the county superintendent of education, and such county superintendent of education shall not be a resident of a municipal separate school district.

(6) In any county traversed by the Natchez Trace Parkway wherein U.S. Highway 45 and Mississippi Highway 4 intersect and having a population of seventeen thousand nine hundred forty-nine (17,949) according to the 1960 federal census, the qualified electors residing within any municipal separate school district shall not participate in the election of the county superintendent of education, and such county superintendent of education shall not be a resident of a municipal separate school district.

**HISTORY: Laws, 1978, ch. 412, § 1; Laws, 1980, ch. 398, § 1; Laws, 1981, ch. 317, § 1; Laws, 1992, ch. 396 § 2; Laws, 2000, ch. 506, § 1; Laws, 2006, ch. 552, § 1; Laws, 2009, ch. 431, § 2; Laws, 2012, ch. 525, § 3; Laws, 2017, ch. 301, § 4, eff from and after passage (approved Jan. 17, 2017).**

**Editor's Notes —** The United States Attorney General, by letter dated August 11, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2000, ch. 506, § 1.

On August 10, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2009, ch. 431.

By letter dated September 24, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 525, Laws of 2012.

Section 27-3-4 provides that the term "State Tax Commission" shall mean the Department of Revenue.

Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the

county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References** — Residency requirements of electors of county boards of education generally, see § 37-5-3.

## JUDICIAL DECISIONS

**1. Eligibility.**

For counties not identified in subsection (2), qualified electors of a municipal separate school district or special municipal separate school district are not eligible to run for the office of county superintendent of education. Basil v. Browning, 175 So. 3d 1289, 2015 Miss. LEXIS 543 (Miss. 2015).

Candidate was not eligible to run for the office of county superintendent of education because he was a resident of a separate school district; the candidate did not present any evidence that he was a qualified elector of the county school district, the county superintendent of education served as the director of all schools within the county school district, which were outside the separate school district where the candidate resided. Basil v. Browning, 175 So. 3d 1289, 2015 Miss. LEXIS 543 (Miss. 2015).

## OPINIONS OF THE ATTORNEY GENERAL

If a School District is not a municipal separate or special municipal separate school district then while the resident voters of the municipal separate and special municipal separate school districts are prevented from voting in the superintendent of education election by subsection (2)(a) of this section, there is no prohibition against the County voters who reside within that School District voting in the election. Chamberlin, February 1, 1995, A.G. Op. #95-0018.

An interim superintendent of education, whether elected or appointed, must be a county resident and must meet the same qualifications provided for in Miss. Code Section 37-9-13 for other superintendents. Johnson, Aug. 8, 1997, A.G. Op. #97-0227.

A qualified elector and resident of the municipal separate school district in Pontotoc County may not be a candidate for the office of county superintendent of education provided the county board of education has in fact adopted a resolution of approval of such method of election for that office; if the board has not adopted the required resolution, a qualified elector and resident of the school district could be a candidate for the office of superintendent of education provided he or she meets all other qualifications to hold said office. Austin, Mar. 7, 2003, A.G. Op. #03-0116.

Qualified electors of Holmes County who reside within the municipal separate school district are statutorily entitled to vote in the election of the county superintendent of education. Hart, July 7, 2003, A.G. Op. 03-1313.

Residents of the Yazoo City Municipal School District are not permitted to vote in any election for the Superintendent of Education for the Yazoo County School District. Clark, Oct. 31, 2003, A.G. Op. 03-0565.

Move by the superintendent of education for a county school district within city limits would not disqualify him as the county superintendent. Burrell, Oct. 27, 2006, A.G. Op. 06-0535.

A qualified elector of Alcorn County who resides within a municipal separate school district is not eligible to be a candidate for Alcorn County Superintendent of Education, as described in Miss. Code Ann. § 37-5-71(3)(f). Follin-King, February 9, 2007, A.G. Op. #07-00058, 2007 Miss. AG LEXIS 13.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 168-171.

## § 37-5-73. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

[Codes, 1942, §§ 6271-08, 6271-09; Laws, 1953, Ex Sess ch. 10, §§ 8, 9; Laws, 1957, Ex Sess ch. 14; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; Laws, 1968, ch. 384, § 1; Laws, 1968, ch 398, § 1; Laws, 1970, ch. 372, § 1]

**Editor's Notes —** Former § 37-5-73 related to qualifications of a superintendent. For present similar provisions, see §§ 37-5-71, 37-9-13.

## § 37-5-75. Filling of vacancy in office [Repealed effective January 1, 2019].

If a vacancy shall occur in the elective office of the county superintendent of education elected at the November 2015 general election before January 1, 2019, the office of superintendent of school shall immediately become an appointed position, and such vacancy shall be filled by appointment by the county board of education. In such case the person so appointed by the county board of education shall hold office under the terms and for the duration of the employment contracted issued by the board of education under the authority of Section 37-9-25.

**HISTORY: Codes, 1942, § 6271-08; Laws, 1953, Ex Sess ch. 10, § 8; Laws, 1962, chs. 344, 345, 346; Laws, 1966, ch. 406, § 1; Laws, 1968, ch. 384, § 1; ch. 398, § 1; Laws, 1970, ch. 372, § 1; Laws, 2000, ch. 592, § 16; Laws, 2017, ch. 301, § 5, eff from and after passage (approved Jan. 17, 2017).**

**Editor's Notes —** The United States Attorney General, by letter dated July 28, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2000, ch. 592, § 16.

Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References** — Provisions providing that all public school districts have a common system of administration after July 1, 1987, see § 37-6-1 et seq.

Certain counties excepted from the provisions of this section, see § 37-5-69.

### OPINIONS OF THE ATTORNEY GENERAL

In the event of a superintendent vacancy, the school board must appoint an interim superintendent to fill the unexpired term or to serve until a successor is elected, and if that term exceeds six months, the board of supervisors must call for a special election to fill the vacancy. Johnson, Aug. 8, 1997, A.G. Op. #97-0227.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 76.

**CJS.**

78 C.J.S., Schools and School Districts §§ 159, 173-175.

## §§ 37-5-77 through 37-5-105. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

§ 37-5-77. [Codes, 1942, § 6252-02; Laws, 1953, Ex Sess ch. 19, § 2; Laws, 1955, Ex Sess ch. 54]

§ 37-5-79. [Codes, 1942, § 6252-11; Laws, 1953, Ex Sess ch. 19, § 11]

§ 37-5-81. [Codes, 1942, § 6252-03; Laws, 1953, Ex Sess ch. 19, § 3; Laws, 1962, ch. 339]

§ 37-5-83. [Codes, 1942, § 6271-10; Laws, 1953, Ex Sess ch. 10, § 10; Laws, 1954, ch. 275; Laws, 1958, ch. 297; Laws, 1960, ch. 308, § 3; Laws, 1966, ch. 407, § 1; Laws, 1968, ch. 399; Laws, 1981, ch. 373, § 1]

§ 37-5-85. [Codes, 1942, § 6252-02; Laws, 1953, Ex Sess ch. 19, § 2; Laws, 1955, Ex Sess ch. 54]

§ 37-5-87. [Codes, 1942, § 6252-05; Laws, 1953, Ex Sess ch. 19, § 5]

§ 37-5-89. [Codes, 1942, § 6252-12; Laws, 1953, Ex Sess ch. 19, § 12; Laws, 1956, ch. 276; Laws, 1966, ch. 403, § 1]

§ 37-5-91. [Codes, 1942, § 6252-07; Laws, 1953, Ex Sess ch. 19, § 7; Laws, 1954, ch. 276, § 1; Laws, 1964, 1st Ex Sess ch. 28, §§ 1-4; Laws, 1981, ch. 499, § 2]

§ 37-5-93. [Codes, 1942, § 6252-07; Laws, 1953, Ex Sess ch. 19, § 7; Laws, 1954, ch. 276, § 1; Laws, 1964, 1st Ex Sess ch. 28, §§ 1-4; Laws, 1980, ch. 315]

§ 37-5-95. [Codes, 1942, § 6274-05; Laws, 1953, Ex Sess ch. 16, § 5]

§ 37-5-97. [Codes, 1942, § 6252-06; Laws, 1953, Ex Sess ch. 19, § 6]

§ 37-5-99. [Codes, 1942, § 6252-08; Laws, 1953, Ex Sess ch. 19, § 8]

§ 37-5-101. [Codes, 1942, § 6274-08; Laws, 1953, Ex Sess ch. 16, § 8]

§ 37-5-103. [Codes, 1942, § 6252-09; Laws, 1953, Ex Sess ch. 19, § 9]

§ 37-5-105. [Codes, 1942, § 6274-04; Laws, 1953, Ex Sess ch. 16, § 4; Laws, 1977, ch. 376; Laws, 1985, ch. 460, § 2]

**Editor's Notes** — Former § 37-5-77 related to the bonding of a county superintendent of education.

Former § 37-5-79 prohibited a county superintendent of education from teaching in any school while he was in office.

Former § 37-5-81 pertained to the office and supplies for a county superintendent of education.

Former § 37-5-83 contained provisions for compensation of a county superintendent of education.

Former § 37-5-85 provided for the appointment of a warrant deputy county superintendent of education.

Former § 37-5-87 provided for the employment and compensation of school supervisors.

Former § 37-5-89 pertained to the employment and compensation of clerical help in the office of the county superintendent of education.

Former § 37-5-91 related to the general powers and duties of county superintendents of education.

Former § 37-5-93 authorized a county superintendent of education to serve as a special fiscal officer.

Former § 37-5-95 required a county superintendent of education to keep minutes of the county board of education.

Former § 37-5-97 required a county superintendent of education to keep records of his official acts.

Former § 37-5-99 required a county superintendent to submit special reports on the status of superintendents, principals and teachers.

Former § 37-5-101 required a county superintendent of education to serve as the superintendent of a county-wide school district.

Former § 37-5-103 provided for settlement of disputes and controversies arising in public schools of a county.

Former § 37-5-105 required a county superintendent of education to maintain a record in his office styled the "Docket of Claims."

# CHAPTER 6.

# MISSISSIPPI UNIFORM SCHOOL LAW

Sec.

37-6-1. Short title.
37-6-3. Application of chapter; definitions; construction of references to "administrative superintendent.".
37-6-5. School district as political subdivision; name.
37-6-7. School board as governing body.
37-6-9. President and secretary of school board; quorum; minutes; voting or abstaining on questions.
37-6-11. Regular meetings; special meetings.
37-6-13. Per diem allowance; expenses and mileage; meeting attendance requirements.
37-6-15. Surety bond for school board member; premiums.

## § 37-6-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Uniform School Law of 1986."

**HISTORY: Laws, 1986, ch. 492, § 1, eff from and after July 1, 1987.**

### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).

## § 37-6-3. Application of chapter; definitions; construction of references to "administrative superintendent."

(1) From and after July 1, 1987, all school districts in the State of Mississippi shall have the same prerogatives, powers, duties and privileges as provided in this chapter.

(2) As used in this chapter, the term "school board" shall mean (a) the county board of education of any countywide school district in this state; and (b) the board of trustees of any municipal separate, special municipal separate, consolidated or line consolidated school district in this state.

(3) As used in this chapter, the term "superintendent" or "superintendent of schools" shall mean (a) the county superintendent of education of any countywide school district in this state whose duties require the supervision of students; and (b) the superintendent of any municipal separate, special municipal separate, consolidated or line consolidated school district in this state.

(4)(a) As used in this chapter, the term "administrative superintendent" shall mean those countywide school superintendents who do not supervise any instructional facility or students and whose duties are prescribed in Section 37-9-16, Mississippi Code of 1972.

(b) This subsection shall stand repealed from and after January 1, 1992, and after such date all references to the "administrative superintendent" in this chapter shall be construed to mean the "superintendent" or "superintendent of schools" as defined in subsection (3) of this section.

**HISTORY: Laws, 1986, ch. 492, § 2; Laws, 1987, ch. 307, § 1, eff from and after passage (approved March 3, 1987).**

**Editor's Notes —** Section 37-9-16, referred to in this section, was repealed by its own terms effective from and after January 1, 1992.

**Cross References —** Applicability of this section to county boards of education, see § 37-5-1.

Applicability of this section to continuation or abolition of office of county superintendent of education, see § 37-9-12.

Transfer of students in county having administrative superintendent, see § 37-15-31.

Applicability of this section to a levy by the board of supervisors for the support of a special municipal separate school district, see § 37-57-105.

Levy by board of supervisors of ad valorem tax for support of office of administrative superintendent, see § 37-57-105.

### OPINIONS OF THE ATTORNEY GENERAL

Where part of a special separate municipal school district is in one county, and school board member elections are held in an adjoining county where the district offices are located, the first county does not have the authority to conduct elections for trustees of a municipal school board that is not located in that county. Dedeaux, July 25, 1997, A.G. Op. #97-0302.

### RESEARCH REFERENCES

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

**Practice References.**

Education Law (Matthew Bender).

## § 37-6-5. School district as political subdivision; name.

Each school district in the state shall be a political subdivision with the name of the district being " ________ School District."

**HISTORY: Laws, 1986, ch. 492, § 3, eff from and after July 1, 1987.**

## § 37-6-7. School board as governing body.

Each school district shall be governed by a school board consisting of five (5) members, selected in the manner provided by law.

**HISTORY: Laws, 1986, ch. 492, § 4, eff from and after July 1, 1987.**

JUDICIAL DECISIONS

**1. Authority of board where vacancy occurs.**

While school boards should not be allowed to operate indefinitely with less than 5 members, boards must be given a reasonable amount of time in which to find a suitable candidate; thus, a 4-member school board had the authority to approve a bond election and authorize the issuance of the bonds at a meeting which took place only 10 days after the fifth board member resigned. Shipman v. North Panola Consol. Sch. Dist., 641 So. 2d 1106, 1994 Miss. LEXIS 372 (Miss. 1994).

## § 37-6-9. President and secretary of school board; quorum; minutes; voting or abstaining on questions.

The school board of all school districts shall organize by the election of a president and a secretary from its membership whose duty it shall be to make reports and to perform all other duties required by law. A majority of the members of the school board shall constitute a quorum for the transaction of business. Minutes shall be kept of all meetings of the school board showing (a) the members present and absent; (b) the date, time and place of the meeting; (c) an accurate recording of any final actions taken at such meeting; (d) a record by individual member of any votes taken at such meeting; and (e) any other information that the school board requests to be reflected in the minutes. Each member of the school board present shall either vote or abstain on every question upon which a vote is taken at such meeting. All action taken by a school board shall become official at the time it is taken. All minutes of the school board shall be signed by the president of the board, shall be attested by the secretary of the board and shall be adopted by the board at the next regular meeting, or within thirty (30) working days, whichever occurs later.

**HISTORY: Laws, 1986, ch. 492, § 5; Laws, 1987, ch. 307, § 2, eff from and after passage (approved March 3, 1987).**

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Resolutions.
3. Recording final actions.

**1. In general.**

While the rules imposed by § 37-6-9 are not to be ignored, they do not require perfection; thus, a school board president's late signing of the minutes of a special board meeting, though a violation of § 37-6-9, did not invalidate the actions of the school board taken at that meeting. Shipman v. North Panola Consol. Sch. Dist., 641 So. 2d 1106, 1994 Miss. LEXIS 372 (Miss. 1994).

**2. Resolutions.**

Neither the fact that a final draft of a resolution calling for a bond election was not in front of the board when the resolution was approved, nor the fact that a copy of the resolution was not entered into the minutes of the meeting, constituted error such that the actions of the board at the meeting should be invalidated. Shipman v. North Panola Consol. Sch. Dist., 641 So. 2d 1106, 1994 Miss. LEXIS 372 (Miss. 1994).

**3. Recording final actions.**

Because a decision to refuse a worker a hearing was a "final action," a school board should have recorded that decision in the minutes; however, the failure to record the decision was harmless error. No prejudice was shown as a result of the error; the worker failed to show how her appellate rights were hampered in a case where her employment contract was not renewed. Hodgins v. Phila. Pub. Sch. Dist., 966 So. 2d 1279, 2007 Miss. App. LEXIS 713 (Miss. Ct. App. 2007).

### OPINIONS OF THE ATTORNEY GENERAL

There is no authority or obligation for new board members or future replacement board members to sign and attest minutes of former board meetings. Minor Sept. 16, 1993, A.G. Op. #93-0647.

Members of the school board are required by statute to either vote or abstain; a vote of "present" should counted as an abstention. Smith, Aug. 4, 2006, A.G. Op. 06-0311.

## § 37-6-11. Regular meetings; special meetings.

The school boards of all school districts shall meet regularly at such time and at such place as shall be designated by an order entered upon the minutes thereof. Special meetings of such boards shall be held upon the call of the president thereof, or upon the call of a majority of the members thereof.

**HISTORY: Laws, 1986, ch. 492, § 6; Laws, 1987, ch. 307, § 3, eff from and after passage (approved March 3, 1987).**

### OPINIONS OF THE ATTORNEY GENERAL

Failure to post notice of a called special meeting of a county school district board of trustees and failure to enter such notice in the official minutes as required by § 25-41-13(1) is a violation of the Open Meetings Act. However, this violation in and of itself does not make the meeting a nullity. Haynes, Mar. 5, 2004, A.G. Op. 04-0053.

## § 37-6-13. Per diem allowance; expenses and mileage; meeting attendance requirements.

(1) Each person serving as a member of the school board of any school district shall receive per diem in the amount of Sixty-seven Dollars ($67.00) for no more than thirty-six (36) meetings of the school board during any one (1) fiscal year or, in his or her discretion, irrevocably may choose to receive as compensation for his or her services an annual salary in the amount of Two Thousand Four Hundred Dollars ($2,400.00), which choice shall remain in force for all successive terms or periods of service of that member. The receipt of the compensation shall not entitle any member of a school board to receive or be eligible for any state employee group insurance, retirement or other fringe benefits. Each member shall be reimbursed for the necessary expenses and mileage in attending meetings of the school board. In addition to the foregoing, all members may be reimbursed for mileage and actual expenses incurred in the further performance of their duties, including attendance at any mandatory school board training session or at regional and national education meetings, when such mileage and other expenses are authorized by the board prior to the date on which they occur. Detailed vouchers shall be

submitted for reimbursement for all expenses authorized by this section. Such reimbursement shall be in accordance with Section 25-3-41.

Such expenses shall be paid on order of the school board by pay certificates issued by the superintendent of the school district involved against the funds available for payment of the administrative expense of the district.

(2)(a) If a member of a school board misses twenty percent (20%) or more of the meetings of the school board during a calendar year, except for absences caused by required military duty, the member must reimburse the school district that portion of the total salary paid to the member that year which is proportionate to the number of meetings missed by the member in relation to the total number of school board meetings held during that year. For purposes of this subsection, consideration may be given only to meetings of which public notice is required.

(b) Before February 1 of each year, the president of each local school board shall submit a report to the State Board of Education containing the names of any members of the school board who missed twenty percent (20%) or more of the school board meetings during the preceding calendar year.

**HISTORY: Laws, 1986, ch. 492, § 7; Laws, 1993, ch. 422, § 1; Laws, 1996, ch. 387, § 1; Laws, 1996, ch. 550, § 1; Laws, 1997, ch. 553, § 1; Laws, 2002, ch. 470, § 1, eff July 2, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** The United States Attorney General, by letter dated September 16, 1996, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 550, § 1.

On July 14, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1997, ch. 553, § 1.

The United States Attorney General, by letter dated July 2, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2002, ch. 470.

## OPINIONS OF THE ATTORNEY GENERAL

Travel expenses of school board members are governed by Section 37-7-301(o) and this section and a school board may approve travel expenses of their membership without the superintendent's recommendation. Hand, February 1, 1995, A.G. Op. #95-0008.

Assuming that there is a sufficient amount remaining on hand at the end of the fiscal year, and the school board orders the payment of per diem pursuant to this section, then per diem may be paid for the preceding fiscal year. However, if a board member fails to seasonably assert a right to payment he may not be paid for more than the one preceding fiscal year. Adams, January 22, 1996, A.G. Op. #95-0867.

This section allows a school board member to elect to be paid a salary instead of per diem. There is no statutory deadline by which this decision is to be made. However, if and when such an election is made, it is prospective in nature. Bordis, November 1, 1996, A.G. Op. #96-0736.

A school board trustee may elect whether to receive compensation or not, and may, within a fiscal year, change that election if funds permit; however, if a board member chooses to receive his compensation as salary, the decision as to the manner of payment is irrevocable. Nelson, July 17, 1998, A.G. Op. #98-0383.

A school board member who was sworn and seated in June of 1999 after a successful challenge to the preceding election, but did not serve on the board from January to June as her seat was contested during this period, could be paid per diem and expenses for the month of June, but not for the period from January to June. Mayfield, July 23, 1999, A.G. Op. #99-0353.

A meal may be provided in lieu of reimbursement in order to avoid disruption of business, if the school board determines that such is a necessary and reasonable expense of a meeting. Bryant, July 30, 1999, A.G. Op. #99-0380.

Whether a meeting of the Congressional Black Caucus Political and Educational Leadership Institute is educational is a factual question which cannot be answered by way of an Attorney General's opinion; however, if the school board makes a determination, consistent with fact and subject to review by the State Auditor or a court of competent jurisdiction, that it is an educational meeting then it may approve the expenditure of funds for the attendance of members, as long as the requirements of this section and Section 37-7-301(o) have been met. Swanson, July 7, 2003, A.G. Op. 03-0330.

A school board recessed meeting does require public notice pursuant to the Open Meetings Act and would be counted when determining whether a school board member missed more than 20% of the meetings of the school board during a calendar year. Hood, Feb. 13, 2004, A.G. Op. 04-0035.

## § 37-6-15. Surety bond for school board member; premiums.

(1) Before entering upon the discharge of the duties of his office, each member of the school board shall give a surety bond in the penal sum of Fifty Thousand Dollars ($50,000.00), with sufficient surety, to be payable, conditioned and approved in the manner provided by law.

(2) The school board may execute a blanket surety bond for each school district official and employee (including school business managers and any other employee who receipts and/or disburses school district funds) in the penalty of Fifty Thousand Dollars ($50,000.00), unless a different penalty is prescribed by statute, to be payable, conditioned and approved in the manner provided by law. The premium on said bond shall be paid out of the school district maintenance fund.

**HISTORY: Laws, 1986, ch. 492, § 8; Laws, 1996, ch. 302, § 7; Laws, 2009, ch. 467, § 14, eff from and after July 1, 2009.**

### OPINIONS OF THE ATTORNEY GENERAL

A school district's responsibility for the payment of the premiums on the surety bonds of its members is for the amount that is necessary to obtain a good and sufficient bond; the district would not be required to bear the expense of that portion of a premium that is over and above the amount determined to be necessary to obtain a good and sufficient bond. Wyly, Jan. 10, 2003, A.G. Op. #02-0761.

If the school board chooses not to obtain a blanket surety bond, an individual member could not be required to obtain his individual bond from a particular source; however, the member cannot legally obligate the school district to pay a premium over and above what is necessary to obtain a good and sufficient bond. Wyly, Jan. 10, 2003, A.G. Op. #02-0761.

A school board member who obtains a surety bond at a cost that is over and above the cost of obtaining a good and sufficient bond would be required to pay the difference between the two. Wyly, Jan. 10, 2003, A.G. Op. #02-0761.

Section 25-1-33 applies to bonds given

by a school board member pursuant to Section 37-6-15(1). Seal, Apr. 18, 2003, A.G. Op. 03-0170.

Payment of a premium that is over and above what is necessary to acquire a good and sufficient bond as determined by a school board would be a waste of taxpayers' money. Seal, Apr. 18, 2003, A.G. Op. 03-0170.

# CHAPTER 7.

# SCHOOL DISTRICTS; BOARDS OF TRUSTEES OF SCHOOL DISTRICTS

| | | |
|---|---|---|
| Article 1. | Reorganization and Reconstitution of Districts. [Repealed]. | 37-7-1 |
| Article 3. | Abolition, Alteration and Creation of Districts. | 37-7-101 |
| Article 5. | Boards of Trustees; Qualifications, Selection and Meetings. | 37-7-201 |
| Article 7. | Boards of Trustees; General Powers and Duties. | 37-7-301 |
| Article 8. | Emergency School Leasing Authority. | 37-7-351 |
| Article 9. | Acquisition and Disposition of District Property. | 37-7-401 |
| Article 11. | Municipal Separate School Districts [Repealed]. | 37-7-601 |
| Article 13. | Special Municipal Separate School Districts. | 37-7-701 |
| Article 15. | Line School Districts [Repealed]. | 37-7-801 |
| Article 17. | Isolated School Districts [Repealed]. | 37-7-901 |
| Article 19. | Commission on School District Efficiency. | 37-7-1001 |

## ARTICLE 1.

## REORGANIZATION AND RECONSTITUTION OF DISTRICTS [REPEALED].

Sec.
37-7-1 through 37-7-17. Repealed.

### §§ 37-7-1 through 37-7-17. Repealed.

Repealed by Laws, 1986, ch. 492, § 50, eff from and after July 1, 1987.

§§ 37-7-1 through 37-7-17. [Codes, 1942, §§ 6328-01, 6328-02, 6328-04, 6328-16, 6328-21, 6328-35 to 6328-39; Laws, 1953 Ex Sess, ch. 12, §§ 1, 2, 4; Laws, 1953 Ex Sess, ch. 17, § 1; Laws, 1955 Ex Sess, ch. 66, § 5; Laws, 1956, ch. 267, §§ 1-5; Laws, 1956, ch. 273]

**Editor's Notes —** Former §§ 37-7-1 through 37-7-17 contained provisions concerning the reorganization and reconstitution of school districts. For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

## ARTICLE 3.

## ABOLITION, ALTERATION AND CREATION OF DISTRICTS.

Sec.

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|---|---|
| 37-7-101. | Repealed. |
| 37-7-103. | Abolition, reorganization or alteration of district by school board. |
| 37-7-104. | Consolidation of certain county school districts under conservatorship into one countywide district under certain circumstances; procedure. |

Sec.
37-7-104.1. Administrative consolidation of all school districts in Bolivar County, Mississippi, into three school districts; procedure.
37-7-104.2. Administrative consolidation of all school districts in Clay County, Mississippi, into one school district; procedure.
37-7-104.3. Administrative consolidation of all school districts in Oktibbeha County, Mississippi, into Starkville-Oktibbeha Consolidated School District; powers and responsibilities of Conservator of Oktibbeha County School District; procedure; issue of bonds and notes for repairs, improvements, purchase of books, buses, equipment, etc.
37-7-104.4. Administrative consolidation of Montgomery County and Winona Municipal Separate School Districts into new countywide separate school district designated Winona-Montgomery Consolidated School District; procedure.
37-7-104.5. Administrative consolidation of Lumberton Public School District; agreement between school boards of Lumberton Public, Lamar County and Poplarville Separate School Districts to abolish and dissolve Lumberton School District; Commission on Administrative Consolidation of the Lumberton Public School District created; composition and purpose.
37-7-104.6. Administrative consolidation of Leflore County and Greenwood Municipal Separate School Districts into new countywide school district designated Greenwood-Leflore School District; procedure.
37-7-104.7. Administrative consolidation of Holmes County and Durant Public School Districts into new countywide school district designated Holmes County Consolidated School District; procedure.
37-7-104.8. Administrative consolidation of Chickasaw County and Houston Municipal Separate School Districts into new school district designated Chickasaw County School District; procedure.
37-7-105. Procedure for alteration of district boundaries or consolidation of school districts by school boards; effect of consolidation as to contracts and taxation.
37-7-107. Abolition of school district pursuant to petition filed by electorate.
37-7-109. Annexation of territory to different district or reorganization into new district pursuant to petition filed by electorate; effect upon outstanding bonds or other indebtedness.
37-7-111. Effect of abolition or alteration of district upon bonds or other indebtedness of district; territory of abolished district to be annexed to another district.
37-7-113. Approval of reorganization, abolition or alteration of school district by State Board of Education.
37-7-115. Appeals from school board orders.
37-7-117 and 37-7-119. Repealed.

## § 37-7-101. Repealed.

Repealed by Laws, 1986, ch. 492, § 59, eff from and after July 1, 1987. [Codes, 1942, § 6328-08; Laws, 1953, Ex Sess, ch. 12, § 8]

**Editor's Notes** — Former § 37-7-101 pertained to the abolition or reorganization of school districts by governing authorities of school districts.

## § 37-7-103. Abolition, reorganization or alteration of district by school board.

From and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish such existing district, or to reorganize, change or alter the boundaries of any such district. In addition thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same, and with the consent of the school board of the school district involved, may detach territory from such school district and annex same to an adjoining district. Provided, however, that the consent of the school board of the school districts involved in implementing the provisions of Section 37-7-104, 37-7-104.2, 37-7-104.3, 37-7-104.4, 37-7-104.5, 37-7-104.6, 37-7-104.7 or 37-7-104.8 shall not be required for the administrative consolidation of such school districts pursuant to the order of the State Board of Education.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 52; Laws, 2012, ch. 441, § 2; Laws, 2012, ch. 551, § 1; Laws, 2013, ch. 568, § 2; Laws, 2013, ch. 572, § 3; brought forward without change, Laws, 2015, ch. 429, § 2; Laws, 2016, ch. 463, § 2; Laws, 2016, ch. 464, § 2; Laws, 2016, ch. 465, § 2; Laws, 2016, ch. 466, § 2; Laws, 2017, ch. 436, § 2, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** This section was amended by Section 2 of Chapter 441, Laws of 2012, effective from and after September 11, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 19, 2012). It was also amended by Section 2 of Chapter 551, Laws of 2012, effective from and after September 10, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. As set out above, this section reflects the language of Section 2 of Chapter 441, Laws of 2012, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Section 2 of ch. 568, Laws of 2013, effective October 25, 2013, the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965 (approved on April 25, 2013), amended this section. Section 3 of ch. 572, Laws of 2013, effective October 24, 2013, the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965 (approved on April 25, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

Section 2 of ch. 463, Laws of 2016, effective July 1, 2016 (approved May 10, 2016, 11:00 a.m.), amended this section. Section 2 of ch. 464, Laws of 2016, effective July 1, 2016 (approved May 10, 2016, 11:02 a.m.). Section 2 of ch. 465, Laws of 2016, effective July 1, 2016 (approved May 10, 2016, 11:05 a.m.), and Section 2 of ch. 466, Laws of 2016, effective July 1, 2016 (approved May 10, 2016, 11:10 a.m.), also amended this section. As set out above, this section reflects the language of all amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the third sentence by reinserting "Section 37-7-104.2 or Section 37-7-104.3," which was erroneously deleted from the integrated version of the section. The Joint Committee ratified the correction at its August 5, 2016, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a grammatical error in the last sentence by substituting "Section" for "Sections." The Joint Committee ratified the correction at its August 15, 2017, meeting.

**Editor's Notes —** This section was amended by two bills in 2013. The effective date of each of the two bills that amended this section, Chapter 572 (House Bill No. 716) and Chapter 568 (Senate Bill No. 2637), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bills were approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 572 and Chapter 568 to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bills, which will allow the bills to take effect.

By letter dated October 24, 2013, the United States Attorney General responded to the submission of Chapter 572, that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 572 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 572, so Chapter 572 became effective from and after October 24, 2013, the date of the United States Attorney General's response letter.

By letter dated October 25, 2013, the United States Attorney General responded to the submission of Chapter 568, that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 568 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 568, so Chapter 568 became effective from and after October 25, 2013, the date of the United States Attorney General's response letter.

The Joint Committee on Compilation, Revision and Publication of Legislation, in its meeting on August 1, 2013, voted to integrate the amendments to this section by Chapter 572 and Chapter 568. The amendments to this section became effective from and after October 25, 2013, the date of the latest response letter from the United States Attorney General.

By letter dated September 11, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 441.

By letter dated September 10, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 551.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. School taxes.

**1. In general.**

A public school board had the authority to consolidate schools within its district and to reassign students en masse; the plan was not a "reorganization of the school district" within the meaning of § 37-7-105. Section 37-7-105 and its petition, publication and referendum procedures do not apply to everything the school board may wish to abolish, alter or reorganize. The statute applies only where the school board "abolishes, alters or reorganizes a school district." The phrase "school district" imports the geographic boundaries of the district and perhaps the corporate organization or structure thereof. The school board's plan did not alter the existing structure of the school district, which remained a countywide district, and did not reorganize corporate structure, and therefore §§ 37-7-103 and 37-7-105 did not apply. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

Section 37-7-105 merely establishes procedural requisites that must be met in carrying out the general grant of authority contained § 37-7-103. If, under § 37-7-103, the school board decides to "reorganize, change or alter the boundaries" of the district, § 37-7-105 requires that it publish its intention to do so and receive petitions from objectors. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

**2. School taxes.**

Where a municipal separate school district was reconstituted in accordance with the law without any added territory, and thereafter the county school district was abolished and its territory accepted by and annexed to the municipal school district, all in strict accord with the relevant statutes, municipal authorities rather than county authorities were thereafter the proper parties to assess and collect school taxes throughout the county. Winston County v. Woodruff, 187 So. 2d 299, 1966 Miss. LEXIS 1341 (Miss. 1966).

## OPINIONS OF THE ATTORNEY GENERAL

There presently exists no statutory authority by which school board may split an existing district into two or more parts and thus create more school districts; however, electors of city desiring its own district may, pursuant to Section 37-7-109, initiate a petition to have it established as separate district. Willis, Jan. 27, 1994, A.G. Op. #94-0029.

Sections 37-7-103, 37-7-113 and 37-7-311 allow a school board to organize its schools so as to serve the best interests of the schools and ultimately the students, and to avoid unnecessary duplication. Where the actions of local school boards do nothing to alter the existing geographical features, boundaries, or corporate structure of the school districts there is no necessity to seek State Board of Education approval. Burnham, February 15, 1995, A.G. Op. #95-0029.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 38, 47 et seq.

16A Am. Jur. Legal Forms 2d (Rev), Schools §§ 229:15 et seq. (creation, alteration, and dissolution of school districts).

**CJS.**

78 C.J.S., Schools and School Districts §§ 16 et seq., 109 et seq.

## § 37-7-104. Consolidation of certain county school districts under conservatorship into one countywide district under certain circumstances; procedure.

(1) In any Mississippi county in which are located, as of February 8, 2012, three (3) school districts and only three (3) school districts, all of which are under conservatorship as defined by the Mississippi Department of Education as of February 8, 2012, there shall be an administrative consolidation of all of the school districts in the county into one (1) countywide school district with one (1) county board of education. The State Board of Education shall determine the school district(s) applicable to the provisions of this section and spread this finding on the minutes of its August 2012 meeting. On or before September 1, 2012, the State Board of Education shall serve the local school boards applicable to the provisions of this section, or the Mississippi Department of Education Conservator for each of the three (3) school districts, with notice and instruction regarding the action to be taken to comply with this section. In such county, there shall be a new county board of education elected in a November 2013 special election which shall be called for that purpose and the new county board members shall be elected as provided in Section 37-5-7, Mississippi Code of 1972. No previous board member shall be eligible to serve on the newly elected board. Provided, however, that it shall be the responsibility of the board of supervisors of such county to apportion the countywide school district into five (5) new single member board of education districts which shall be consistent with the supervisors district lines in said county. The board of supervisors of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of supervisors of said county, said new district lines will thereafter be effective for the November 2013 special election. If necessary, the county board of education of said county shall reapportion the board of education districts in accordance with applicable law as soon as practicable after the results of the 2020 decennial census are published and as soon as practicable after every decennial census thereafter. The new county board of education, with the written approval of the Mississippi Department of Education Conservator and the State Board of Education, shall provide for the administrative consolidation of all school districts in the county into one (1) countywide school district on or before July 1 next following the November 2013 election. The new county board of education shall serve as the school board for the county. Any school district affected by the required administrative consolidation that does not voluntarily consolidate with the new school district ordered by the county board of education shall be administratively consolidated by the State Board of Education with the countywide school district, to be effective on July 1 following the election of the new county board of education. The State Board of Education shall promptly move on its own motion to administratively consolidate any school district which does not voluntarily consolidate in order to enable the affected school districts to

reasonably accomplish the resulting administrative consolidation into one (1) countywide district by July 1 following the election of the new county board of education. All affected school districts shall comply with any consolidation order issued by the county board of education or the State Board of Education, as the case may be, on or before July 1 following the election of the new county board of education.

(2) On July 1 following the election of the new county board of education, the former county board of education and the former board of trustees of any municipal separate, or special municipal separate school district located in such county shall be abolished. All real and personal property which is owned or titled in the name of a school district located in such county shall be transferred to the new reorganized school district of the county in which such school district is located. The Mississippi Department of Education Conservator and the State Board of Education shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor county board of education. The successor county board of education shall appoint the new county superintendent of education for the reorganized school district. The county superintendent of education of said reorganized school district shall not be elected but shall thereafter be appointed by the successor county board of education in the manner provided in Section 37-9-25. The superintendents of the former under-performing school districts located in the county shall not be eligible for appointment as the new superintendent. The selection of the appointed county superintendent of education and the assistant superintendent of education in the central administration office of the successor countywide school district shall be the responsibility of the successor county board of education with the approval of the Mississippi Department of Education Conservator and the State Board of Education. No such administratively consolidated school district shall have more than one (1) assistant superintendent of education. It shall be the responsibility of the successor county board of education, with approval of the Mississippi Department of Education Conservator and the State Board of Education, to prepare and approve the budget of the new reorganized districts, and the county board of education may use staff from the former school districts to prepare the budget. Any proposed order of the successor county board of education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be submitted and approved by the State Board of Education. The finding of the State Board of Education shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation. Any person or school district aggrieved by an order of the successor county school board of education pursuant to the required administrative consolidation may appeal therefrom to the State Board of Education within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Such appeal shall be de novo, and the finding of the State Board of Education upon such question shall be final and conclusive for the purpose of the approval or disapproval of the action by said county board of education.

(3) When any school district in such county is abolished under the provisions of this section, the abolition thereof shall not impair or release the property of such former school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished from year to year according to the terms of such indebtedness until same shall be fully paid.

(4) In the administratively consolidated countywide school district created under this section, the ad valorem tax rate shall be determined as set forth under Section 37-57-1 et seq.

(5) Nothing in this section shall be construed to require or restrict the closing of any school or school facility, unless such facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in a county pursuant to this section. When the orders of the successor county board of education adopting the boundaries of the successor countywide school district have been entered and are final, as approved by the State Board of Education, the new district lines shall be submitted by the State Board of Education with the assistance of the Attorney General to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines are precleared or approved, the State Board of Education shall formally declare the new lines as the new boundaries of the consolidated countywide school district.

**HISTORY: Laws, 2012, ch. 441, § 1, eff September 11, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).**

**Editor's Notes** — By letter dated September 11, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2012, ch. 441.

**Cross References** — Consent of school board of school districts involved in implementing the provisions of this section, § 37-7-104.1 or 37-27-79, not required for the administrative consolidation of the school districts pursuant to order of State Board of Education, see § 37-7-103.

## § 37-7-104.1. Administrative consolidation of all school districts in Bolivar County, Mississippi, into three school districts; procedure.

(1) In Bolivar County, Mississippi, in which are located, as of January 1,

2012, six (6) school districts, there shall be an administrative consolidation of all of the school districts in the county into three (3) school districts as follows:

(a) One (1) existing school district which shall be the Cleveland School District;

(b) One (1) new consolidated school district to be designated as North Bolivar Consolidated School District which shall consist of the territory of the former North Bolivar School District and the Mound Bayou Public School District. The central administrative office of the North Bolivar Consolidated School District shall be located in Mound Bayou, Mississippi; and

(c) One (1) new consolidated school district to be designated as West Bolivar Consolidated School District which shall consist of the territory of the former West Bolivar School District, Shaw School District and Benoit School District. The central administrative office of the West Bolivar Consolidated School District shall be located in Rosedale, Mississippi.

(2) On or before September 1, 2012, the State Board of Education shall serve the local school boards in Bolivar County with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section. The State Board of Education shall provide for the administrative consolidation of all school districts in the county outside of the territory of Cleveland School District into North Bolivar Consolidated School District and West Bolivar Consolidated School District on or before July 1, 2014. In each new consolidated school district there shall be a new consolidated school district board of trustees elected in a November 2013 special election which shall be called by the Governor for that purpose. The new consolidated school district boards of trustees shall be elected and the terms of office established as provided in Section 37-7-207, Mississippi Code of 1972. The State Board of Education shall determine the boundary lines for the territory of the two (2) new school districts and shall spread a legal description of the new school districts on the minutes of its August 2012 meeting and shall serve the applicable school boards and the board of supervisors with an adequate legal description of these new boundaries. It shall be the responsibility of the State Board of Education with the assistance of the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) to apportion the territory of the two (2) new school districts into five (5) new board of trustee election districts for each new school district. The State Board of Education shall thereafter publish the same in some newspaper of general circulation in said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each school district in the county, said new district lines will thereafter be effective for the November 2013 special election. Any school board member of the former school district residing in the proper election district shall be eligible for election to the new board of trustees for North Bolivar Consolidated School District or West Bolivar Consolidated School District. The local school board of each new school district shall reapportion the school board districts in accordance with the procedure

described in Section 37-7-207, Mississippi Code of 1972, as is necessary as soon as practicable after the 2020 decennial census are published and as soon as practicable after every decennial census thereafter. Any school district affected by the required administrative consolidation in such county that does not voluntarily consolidate with the two (2) new school districts ordered by the State Board of Education shall be administratively consolidated by the State Board of Education with the appropriate school district in which such district is located, to be effective on July 1 following the election of the new local school boards. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into two (2) school districts by July 1 following the election of the new school boards. All affected school districts shall comply with any consolidation order issued by the State Board of Education on or before July 1 following the election of the new school boards.

(3) On July 1 following the election of the new school district boards of trustees in Bolivar County, the former county board of education and the former board of trustees of North Bolivar School District, Mound Bayou Public School District, West Bolivar School District, Shaw School District and Benoit School District shall be abolished. All real and personal property which is owned or titled in the name of a school district located in such former school district shall be transferred to the new reorganized school district of Bolivar County in which such former school district is located. Each former school board shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor school boards. The new Board of Trustees for the North Bolivar Consolidated School District shall appoint the Superintendent of Schools for said school district, and the Board of Trustees for the West Bolivar Consolidated School District shall appoint the Superintendent of Schools for said school district. The subsequent superintendent of schools of said reorganized school districts shall not be elected but shall thereafter be appointed by the successor boards of trustees in the manner provided in Section 37-9-25. Any superintendent serving in the former school districts shall be eligible for appointment as a superintendent in North Bolivar Consolidated School District or West Bolivar Consolidated School District. North Bolivar Consolidated School District and West Bolivar Consolidated School District shall not have more than one (1) assistant superintendent. It shall be the responsibility of the successor boards of trustees to prepare and approve the budget of the respective new reorganized districts, and the successor boards of trustees may use staff from the former school districts to prepare the budget. Any proposed order of the State Board of Education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation. Any person or school district aggrieved by an

order of the successor newly elected board of trustees of a consolidated school district pursuant to the required administrative consolidation may appeal therefrom to the State Board of Education within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Such appeal shall be de novo, and the finding of the State Board of Education upon such question shall be final and conclusive for the purpose of the approval or disapproval of the action by said county board of education.

(4) When any school district in such county is abolished under the provisions of this section, the abolition thereof shall not impair or release the property of such former school district from liability for the payment of the bonds or other indebtedness of such district.

(5) Nothing in this section shall be construed to require the closing of any school or school facility, unless such facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Bolivar County pursuant to this section. The consolidated districts shall make an election within one (1) year of consolidation concerning the group term life insurance described in subsection (7) of Section 25-15-9. When the orders of the State Board of Education adopting the boundaries of the successor school districts and the successor board of trustees election districts have been entered and are final, as directed by the State Board of Education, the new district lines shall be submitted by the State Board of Education with the assistance of the Attorney General to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines and election districts are precleared or approved, the State Board of Education shall formally declare the new lines as the new boundaries of the successor school districts.

**HISTORY: Laws, 2012, ch. 551, § 1, eff September 10, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1)(a) and (2) by substituting "Cleveland School District" for "Cleveland Municipal Separate School District." The Joint Committee ratified the correction at its August 1, 2013, meeting.

**Editor's Notes —** By letter dated September 10, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2012, ch. 551.

**Cross References —** Consent of school board of school districts involved in implementing the provisions of this section, § 37-7-104 or 37-27-79, not required for the administrative consolidation of the school districts pursuant to order of State Board of Education, see § 37-7-103.

### § 37-7-104.2. Administrative consolidation of all school districts in Clay County, Mississippi, into one school district; procedure.

(1) In Clay County, Mississippi, in which are located, as of January 1, 2013, two (2) school districts, there shall be an administrative consolidation of all of those school districts in the county into one (1) new consolidated school district to be designated as West Point Consolidated School District which shall consist of the territory of the former Clay County School District and the West Point School District. The central administrative office of the West Point Consolidated School District shall be located in West Point, Mississippi.

(2) On or before September 1, 2013, the State Board of Education shall serve the local school boards in Clay County with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section. The State Board of Education shall provide for the administrative consolidation of the school districts in the county on or before July 1, 2015. In the new West Point Consolidated School District, there shall be a new board of trustees comprised of five (5) members selected as follows: (a) the Mayor and Board of Aldermen of the City of West Point shall appoint three (3) of the five (5) members, each to be selected for a term of four (4) years; and (b) two (2) members to be elected for a term of four (4) years by the electors of Clay County residing outside of the West Point corporate limits who shall be residents of that territory and who shall be elected in a November 2014 special election which shall be called by the Governor for that purpose. All subsequent members of the board elected from the territory outside of the West Point corporate limits shall be elected for a term of four (4) years at the regular general election held on the first Monday in November next preceding the expiration of the term of office of the respective member or members. All elected and appointed members shall take office on the first Monday of January following the date of their election or appointment. The State Board of Education, with the assistance of the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), shall apportion the territory of the new consolidated school district located outside the West Point corporate limits into two (2) new single member board of trustee election districts. The State Board of Education shall thereafter publish the same in some newspaper of general circulation in the county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each school district in the county, the new district lines will thereafter be effective for the November 2014 special election. Any school board member of the former school districts residing in the proper territory shall be eligible for appointment or election to the new Board of Trustees for West Point Consolidated School District.

Any school district affected by the required administrative consolidation in Clay County that does not voluntarily consolidate as ordered by the State Board of Education shall be administratively consolidated by the State Board of Education, to be effective on July 1 following the election of the new local school board. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into one (1) consolidated school district by July 1 following the selection of the new board of trustees. The affected school districts shall comply with any consolidation order issued by the State Board of Education on or before July 1 following the selection of the new school boards.

(3) On July 1 following the selection of the new Board of Trustees of the West Point Consolidated School District, the former county board of education and the former Board of Trustees of the West Point School District shall be abolished. All real and personal property which is owned or titled in the name of a school district located in such former school district shall be transferred to the new reorganized school district of West Point Consolidated School District in which such former school district is located. Each former school board shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor school board. The new Board of Trustees for the West Point Consolidated School District shall appoint the Superintendent of Schools for the school district. The Superintendent of Schools for the West Point Consolidated School District may appoint assistant superintendent(s) of schools for the district, but in no instance shall the administrative leadership of the West Point Consolidated School District exceed the number of assistant superintendents employed in the former West Point School District. The subsequent superintendent of schools of the reorganized school district shall not be elected, but shall thereafter be appointed by the successor board of trustees in the manner provided in Section 37-9-25. It shall be the responsibility of the successor board of trustees to prepare and approve the budget of the new reorganized district, and the successor board of trustees may use staff from the former school districts to prepare the budget. Any proposed order of the State Board of Education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation. Any person or school district aggrieved by an order of the successor newly selected Board of Trustees of the West Point Consolidated School District pursuant to the required administrative consolidation may appeal therefrom within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Said appeal shall be taken in the same manner as appeals are taken from judgments or decisions of the board of supervisors as provided in Section 11-51-75, Mississippi Code of 1972, the provisions of which shall be fully applicable to appeals taken hereunder. The Board of Trustees of the West Point Consolidated School District shall not pass upon or approve or disapprove any such order until the time for an appeal therefrom shall have expired, nor shall said board pass upon or approve or disapprove any such order from which an appeal is taken until said appeal shall have been finally determined.

(4) When any school district in the county is abolished under the provisions of this section, the abolition thereof shall not impair or release the property of that former school district from liability for the payment of the bonds or other indebtedness of such district.

(5) Nothing in this section shall be construed to require the closing of any school or school facility, unless the facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Clay County pursuant to this section. The consolidated districts shall make an election within one (1) year of consolidation concerning the group term life insurance described in subsection (7) of Section 25-15-9. When the orders of the State Board of Education adopting the boundaries of the successor board of trustees election districts have been entered and are final, as directed by the State Board of Education, the new district lines shall be submitted by the State Board of Education with the assistance of the Attorney General to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines and election districts are precleared or approved, the State Board of Education shall formally declare the new lines as the new boundaries of the successor school district.

(7) For the initial two (2) years following the administrative consolidation required by this section, the State Department of Education may grant a waiver of accountability and state assessment requirements to the West Point Consolidated School District for the student population enrolled therein from the former Clay County School District when determining the new consolidated school district accreditation level on the performance and accountability rating model.

**HISTORY: Laws, 2013, ch. 568, § 1, eff October 25, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).**

**Editor's Notes** — The effective date of Chapter 568, which added this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 568 to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 25, 2013, the United States Attorney General responded to the submission of Chapter 568 that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 568 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 568, so Chapter 568 became effective from and after October 25, 2013, the date of the United States Attorney General's response letter.

## § 37-7-104.3. Administrative consolidation of all school districts in Oktibbeha County, Mississippi, into Starkville-Oktibbeha Consolidated School District; powers and responsibilities of Conservator of Oktibbeha County School District; procedure; issue of bonds and notes for repairs, improvements, purchase of books, buses, equipment, etc.

(1) In Oktibbeha County, Mississippi, in which are located, as of January 1, 2013, two (2) school districts, there shall be an administrative consolidation of all of those school districts in the county into one (1) new countywide municipal separate school district to be designated as Starkville-Oktibbeha Consolidated School District which shall consist of the territory of the former Oktibbeha County School District and the Starkville School District, effective on July 1, 2015. Until June 30, 2015, preceding the effective date of the required administrative consolidation of school districts in the county, the Oktibbeha County School District shall remain in conservatorship, under the authority and control of the Mississippi Recovery School District of the State Department of Education. At such time that the administrative consolidation becomes effective, the central administrative office of the Starkville-Oktibbeha Consolidated School District shall be located in Starkville, Mississippi.

(2)(a) On or before July 1, 2014, the State Board of Education shall serve the local school board of the Starkville School District with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section.

(b) In the new consolidated school district there shall be a countywide municipal separate school district board of trustees, which shall consist of the existing members of the Board of Trustees of the Starkville School District. However, upon the first occurrence of a vacancy on the board as a result of an expired term of an appointed board member, that vacancy shall become an elected position and shall be filled by the election of a board member as follows: the 2016 expiring term board member shall remain in office until January 1, 2017. In November 2016, an election will be held for a board member who resides outside of the incorporated municipal limits in the manner prescribed in Section 37-7-203, and the elected board member will take office for a five-year term beginning January 1, 2017. Subsequent board members shall be selected in the manner prescribed in Section 37-7-203. The Board of Supervisors of Oktibbeha County shall publish notice of the school board elections in some newspaper of general circulation in the county for at least three (3) consecutive weeks.

(c) Any school district affected by the required administrative consolidation in the county that does not voluntarily consolidate as ordered by the State Board of Education shall be administratively consolidated by the State Board of Education, to be effective immediately upon action of the State Board of Education. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into one (1) consolidated school district by July 1 following the motion to consolidate. The affected school districts shall comply with any consolidation order issued by the State Board of Education.

(3) On July 1, 2015, following the motion of State Board of Education to consolidate school districts in Oktibbeha County, the Oktibbeha County School District shall be abolished. All real and personal property which is owned or titled in the name of the school district located in such former school district shall be transferred to the Starkville-Oktibbeha Consolidated School District as of July 1, 2015. The Conservator of the Oktibbeha County School District is authorized and directed to execute and record all documents and conveyances necessary to convey title to all real and personal property of the Oktibbeha County School District to the Starkville-Oktibbeha Consolidated School District. The conservator is further authorized and directed to sign all documents and to take all actions necessary to assign contracts and other property, contract rights and obligations of the Oktibbeha County School District to the Starkville-Oktibbeha Consolidated School District. The Board of Trustees of the Starkville School District shall be responsible for establishing the contracts for operations, teachers, principals, clerical and administrative staff personnel for the 2015-2016 school year prior to July 1, 2015, and shall consult with the conservator for the establishment of contracts for teachers, principals, clerical and administrative staff personnel located in the former Oktibbeha County School District for the 2015-2016 school year. In order to prepare for the efficient staffing of the Starkville-Oktibbeha Consolidated School District, the Conservator of the Oktibbeha County School District and the Superintendent of the Starkville School District shall have full authority to nonrenew the employment contract of any teacher, principal, clerical or administrative staff located within their respective school districts for the 2015-2016 school year. The superintendent and assistant superintendent(s) of schools of the former Starkville School District shall continue to serve in like administrative capacities of the Starkville-Oktibbeha Consolidated School District, but in no instance shall the administrative leadership of the Starkville-Oktibbeha Consolidated School District exceed three (3) assistant superintendents to be appointed by the superintendent of the former Starkville School District. No superintendent serving in the former Oktibbeha County School District shall be eligible for appointment as a superintendent or assistant superintendent in the Starkville-Oktibbeha Consolidated School District. Likewise, no trustee

serving in the former Oktibbeha County School District shall be eligible for election to the new Board of Trustees of the Starkville-Oktibbeha Consolidated School District. It shall be the responsibility of the board of trustees to prepare and approve the budget of the respective new reorganized district, and the board of trustees may use staff from the former school district to prepare the budget. Any transfer of the assets, real or personal property of the Oktibbeha County School District mandated by this section shall be final and conclusive for the purposes of the transfer of property required by this section to effectuate the administrative consolidation.

(4) Nothing in this section shall be construed to require the closing of any school or school facility, unless the facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(5) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Oktibbeha County pursuant to the requirements of this section. Beginning with the insurance cafeteria plan year of November 1, 2014, the consolidated districts shall fall under all insurance plans and policies elected by the Starkville Public School District, including the group term life insurance described in Section 25-15-9(7).

(6) For the initial three (3) years following the administrative consolidation required by this section, the State Department of Education shall grant a waiver of accountability and state assessment requirements to the Starkville-Oktibbeha Consolidated School District, subject to the approval of the State Board of Education.

(7) As soon as practicable after March 31, 2015, the Conservator of the Oktibbeha County School District shall initiate the issuance of notes or certificates of indebtedness of the Oktibbeha County School District for the purpose of purchasing school buses, textbooks, computers and software and other equipment and fixtures for school facilities, and for any purposes enumerated in Section 37-59-3, Mississippi Code of 1972, and making repairs, alterations, utility upgrades and additions to two (2) elementary school buildings located in the Oktibbeha County School District in order to meet the same physical and educational standards as the elementary school buildings in Starkville, and to contribute funds to the Starkville School District for capital improvements to accommodate county school district students and increase capacity for the consolidation. The contribution of such funds to the Starkville School District is hereby authorized. Said notes or certificates of indebtedness shall be issued under the authority of Sections 37-59-101 through 37-59-115, Mississippi Code of 1972, including all notice requirements, however, the resolution as to the necessity for the issuance of the notes and the execution of the documents shall be made by the Conservator of the Oktibbeha County School District. The term of any notes or certificates of indebtedness issued under this section may not exceed the useful life of the financed project as

determined according to the upper limit of useful life and depreciation guidelines established under the United States Internal Revenue Code and regulations. The levying authority for the Oktibbeha County School District, and after July 1, 2015, the levying authority for the Starkville-Oktibbeha Consolidated School District, shall annually levy a special tax on all taxable property of the former Oktibbeha County School District, and after July 1, 2015, on all taxable property of the Starkville-Oktibbeha Consolidated School District, in an amount sufficient to pay the principal of and interest on such negotiable notes or certificates of indebtedness as the same shall respectively mature and accrue. Said tax shall be levied as provided in Section 37-59-107, Mississippi Code of 1972, except that the levy shall not exceed three (3) mills on the dollar for the payment of all notes that are subject to the levy under Section 37-59-107. Any notes or certificates of indebtedness issued pursuant to this subsection (7) shall become indebtedness of the new Starkville-Oktibbeha Consolidated School District from and after July 1, 2015, and the mandatory special ad valorem tax levied to pay the notes or certificates of indebtedness by the levying authority pursuant to Section 37-59-107, Mississippi Code of 1972, shall be levied upon all of the taxable property within the Starkville-Oktibbeha Consolidated School District.

(8) For a period beginning July 1, 2014, and ending June 30, 2015, the Conservator of the Oktibbeha County School District shall issue negotiable bonds of the Oktibbeha County School District for the purpose of purchasing school buses, textbooks, computers and software and other equipment and fixtures for school facilities, and making repairs, alterations and additions and utility upgrades, and for any purposes allowed by Section 37-59-3, Mississippi Code of 1972, to school facilities in the Oktibbeha County School District and in the Starkville School District to accommodate students in the former Oktibbeha County School District who will be attending school in the new Starkville-Oktibbeha Consolidated School District and the increased capacity needs under the consolidation. Said bonds shall be issued under the authority of Sections 37-59-1 through 37-59-45, however, any resolutions as to the necessity for the issuance of any bonds and execution of the documents may be made periodically by the Conservator of the Oktibbeha County School District. Provided further, that the conservator shall publish each resolution of necessity and intent to issue any bonds once each week for at least three (3) consecutive weeks in a newspaper having general circulation in the Oktibbeha County School District, with the first publication thereof to be made not less than fifteen (15) days prior to the date upon which the conservator is to take final action upon the question of authorizing the issuance of said bonds. If no petition requesting an election is filed prior to the date and time of the meeting at which the conservator is to take final action on the issuance of said bonds, then the conservator shall authorize the issuance of the bonds. If at any time prior to the date and time of the meeting at which the conservator is to take final action upon the question of issuing such bonds a petition signed by not less than twenty percent (20%) of the qualified electors of the Oktibbeha County School District shall be filed with the Conservator of the Oktibbeha

County School District requesting that an election be called on the question of issuing the bonds, then the conservator shall either rescind the applicable resolution of intent or adopt a resolution calling an election to be held within the territory of the Oktibbeha County School District upon such question. The election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the question of bond issues under Sections 37-59-11, 37-59-13, 37-59-15 and 37-59-17, and the results thereof shall be certified by the Oktibbeha County Election Commission to the Conservator of the Oktibbeha County School District. If three-fifths (3⁄5) of the qualified electors of the Oktibbeha County School District who voted in such election vote in favor of the issuance of such bonds, then the conservator shall authorize the Oktibbeha County School District to issue such bonds. Notwithstanding any provision to the contrary, the Oktibbeha County School District may issue bonds pursuant to this subsection (8) in an amount which, when added to all of the Oktibbeha County School District's then outstanding bonded indebtedness, shall not result in the imposition on any of the property in said district of an indebtedness for school purposes of more than twenty percent (20%) of the assessed value of the taxable property within said district, according to the then last completed assessment for taxation. Any bonds issued pursuant to this subsection (8) shall become indebtedness of the new Starkville-Oktibbeha Consolidated School District from and after July 1, 2015, and the mandatory special ad valorem tax to be levied by the levying authority pursuant to Section 37-59-23, Mississippi Code of 1972, to pay the bonds shall be levied upon all taxable property within the Starkville-Oktibbeha Consolidated School District.

(9) For a period beginning July 1, 2015, and ending July 1, 2024, the new Starkville-Oktibbeha Consolidated School District Board of Trustees may periodically issue negotiable bonds in one or more series of the Starkville-Oktibbeha Consolidated School District for the purpose of purchasing school buses, textbooks, computers and software and other equipment and fixtures for school facilities and for any purposes enumerated in Section 37-59-3, Mississippi Code of 1972. The term of any such bonds may not exceed the useful life of the financed project as determined according to the upper limit of useful life and depreciation guidelines established under the United States Internal Revenue Code and regulations. Said bonds shall be issued under the authority of Sections 37-59-1 through 37-59-45, including all notice and publication requirements, however, the necessity for the issuance of the bonds shall be made pursuant to a reverse referendum procedure to be followed by the Starkville-Oktibbeha Consolidated School District Board of Trustees as follows: the board of trustees shall publish each resolution of necessity and intent to issue bonds once each week for at least three (3) consecutive weeks in a newspaper having general circulation in the Starkville-Oktibbeha Consolidated School District, with the first publication thereof to be made not less than fifteen (15) days prior to the date on which the board of trustees is to take final action authorizing the issuance of the bonds. If no petition requesting an election is filed prior to the date and time of the meeting at which the board of

trustees is to take final action on the issuance of the bonds, the board of trustees shall authorize the issuance of the bonds. If at any time prior to the date and time of the meeting at which the board of trustees is to take final action authorizing the issuance of the bonds a petition signed by not less than twenty percent (20%) of the qualified electors of the Starkville-Oktibbeha Consolidated School District shall be filed with the Board of Trustees of the Starkville-Oktibbeha Consolidated School District requesting that an election be called on the question of issuing the bonds, then the board of trustees shall, not later than its next regular meeting, adopt a resolution calling an election to be held within the Starkville-Oktibbeha Consolidated School District upon such question. The election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the question of bond issues under Sections 37-59-11, 37-59-13, 37-59-15 and 37-59-17, and the results thereof shall be certified to the Starkville-Oktibbeha Consolidated School District Board of Trustees, as the case may be. If three-fifths (3/5) of the qualified electors of the Starkville-Oktibbeha Consolidated School District who voted in such election vote in favor of the issuance of such bonds, then the board of trustees shall issue such bonds. Notwithstanding any provision to the contrary, the Starkville-Oktibbeha Consolidated School District may issue bonds pursuant to this subsection (9) in an amount which, when added to all of the Starkville-Oktibbeha Consolidated School District's then outstanding bonded indebtedness, shall not result in the imposition on any of the property in said district of an indebtedness for school purposes of more than twenty percent (20%) of the assessed value of the taxable property within said district, according to the then last completed assessment for taxation. Any bonds issued pursuant to this subsection (9) shall be indebtedness of the new Starkville-Oktibbeha Consolidated School District. The mandatory special ad valorem tax to be levied by the levying authority pursuant to Section 37-59-23, Mississippi Code of 1972, shall be levied on all taxable property of the Starkville-Oktibbeha Consolidated School District.

(10) Notwithstanding any law or any provision of any law to the contrary, from and after July 1, 2015, all outstanding debt of the former Oktibbeha County School District and the former Starkville School District shall be assumed by and become the debt of the new Starkville-Oktibbeha Consolidated School District. Any debt assumed by the Starkville-Oktibbeha Consolidated School District secured by a special ad valorem tax shall become secured by and payable from a mandatory, special ad valorem tax which shall be levied on all taxable property in the Starkville-Oktibbeha Consolidated School District by the levying authority of the Starkville-Oktibbeha Consolidated School District. All debt secured by a pledge by either district of its education enhancement funds pursuant to Section 37-61-33, Mississippi Code of 1972, or by a pledge of its Mississippi Adequate Education Program funds will continue to be secured by and payable from the same funds after the debt is assumed by the Starkville-Oktibbeha Consolidated School District as of July 1, 2015. It is the intent of the Legislature that any such pledges will remain in effect and that the pledged funds will be available to the Starkville-Oktibbeha Consolidated School District to pay its debt to which the funds are pledged.

(11) It shall be the responsibility of the Board of Supervisors of Oktibbeha County to provide office, furnishing and utilities for the administrative Office of the Superintendent of the Starkville-Oktibbeha Consolidated School District.

(12) The new Starkville-Oktibbeha Consolidated School District is authorized and encouraged to develop a partnership with Mississippi State University to create a model rural education school to serve all sixth- and seventh-grade students from Oktibbeha County and a model prekindergarten program which shall also serve as a model for the education of teachers and administrators. The Starkville-Oktibbeha Consolidated School District and Mississippi State University are authorized and empowered, in each's discretion, to enter into an agreement for the purpose of designing, constructing, maintaining and operating a model rural education school to serve all sixth- and seventh-grade students from Oktibbeha County. The Starkville-Oktibbeha Consolidated School District and Mississippi State University are further authorized and empowered, in each's discretion, to transfer funds to the other and expend such funds on mutually agreeable terms and conditions for the construction, maintenance and operation of such school.

(13) The Board of Supervisors of Oktibbeha County shall be the "levying authority" for the Starkville-Oktibbeha Consolidated School District.

**HISTORY: Laws, 2013, ch. 572, § 2; Laws, 2014, ch. 537, § 2; Laws, 2015, ch. 429, § 3; Laws, 2016, ch. 354, § 1; Laws, 2017, ch. 437, § 2, eff from and after July 1, 2017.**

**Editor's Notes —** The effective date of Chapter 572, which added this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 572 to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 24, 2013, the United States Attorney General responded to the submission of Chapter 572 that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 572 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 572, so Chapter 572 became effective from and after October 24, 2013, the date of the United States Attorney General's response letter.

Laws of 2016, ch. 354, § 2, provides:

"SECTION 2. Subject to the approval of the Board of Trustees of State Institutions of Higher Learning, Mississippi State University is authorized and empowered, in its discretion, to lease to the Starkville-Oktibbeha Consolidated School District and the Starkville-Oktibbeha Consolidated School District is authorized and empowered, in its discretion, to lease from Mississippi State University, upon mutually agreeable terms and conditions, land suitable for a model rural education school to serve all sixth- and seventh-grade students from Oktibbeha County for a term not to exceed ninety-nine (99) years. Any such lease shall not be cancelled by successor boards based on the binding successor doctrine."

### § 37-7-104.4. Administrative consolidation of Montgomery County and Winona Municipal Separate School Districts into new countywide separate school district designated Winona-Montgomery Consolidated School District; procedure.

(1) In Montgomery County, Mississippi, in which are located, as of January 1, 2016, two (2) school districts, there shall be an administrative consolidation of all of those school districts in the county into one (1) new countywide municipal separate school district to be designated as Winona-Montgomery Consolidated School District which shall consist of the territory of the former Montgomery County School District and the Winona Municipal Separate School District, effective on July 1, 2018. At such time that the administrative consolidation becomes effective, the central administrative office of the Winona-Montgomery Consolidated School District shall be located in Winona, Mississippi.

(2) As soon as practicable, a financial advisor and/or other facilitator with school district experience may be assigned by the Mississippi Department of Education to oversee the budgeting and financial matters relating to the consolidation of the districts slated for consolidation. The financial advisor and/or facilitator may, at the discretion of the Mississippi Department of Education, continue duties for one (1) year after the consolidation to ensure that all financial matters are in place. All financial expenditures of districts that are closing must be approved by the financial advisor and/or facilitator. If the superintendent and/or school board approves expenditures outside of this approval, they shall be personally liable for the excess expenditures. The State Board of Education shall determine the compensation to be paid to the financial advisor and/or facilitator which shall be paid by the local school district to which the financial advisor and/or facilitator is assigned.

(3)(a) On or before September 1, 2017, the State Board of Education shall serve the local school board of the Winona Municipal Separate School District and the local school board of the Montgomery County School District with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section.

(b) In the new Winona-Montgomery Consolidated School District, there shall be a new countywide municipal separate school district board of trustees comprised of five (5) members, which shall consist of the existing members of the Board of Trustees of the Winona Municipal Separate School District. However, when consolidation becomes effective, the two (2) appointed board members of the Winona Municipal Separate School District whose terms are nearest to expiration shall expire on January 1, 2019, shall thereafter become elected positions to be filled by the election of board members in a manner prescribed in subparagraph (ii) of this paragraph (b). The new countywide municipal separate school district board of trustees of the Winona-Montgomery Consolidated School District shall be comprised as follows:

(i) The three (3) members of the existing Board of Trustees of the Winona Municipal Separate School District appointed by the Board of Aldermen of the City of Winona with the most years remaining in their terms shall serve until the expiration of such appointed term and thereafter, appointments shall each be selected for a term of four (4) years beginning on January 1 of the year next succeeding the appointment;

(ii) The two (2) members of the board elected after the appropriate appointments become permanently elected positions, shall be elected for a term of four (4) years by the electors of Montgomery County residing outside of the Winona corporate limits who shall be residents of that territory and who shall be elected in an election held on Tuesday after the first Monday in November 2018, in the manner prescribed in Section 37-7-203, and the elected members will take office on January 1, 2019. All subsequent members of the board elected from the territory outside of the Winona corporate limits shall be elected for a term of four (4) years at the regular general election held on the first Monday in November next preceding the expiration of the term of office of the respective member or members, and shall take office on January 1 next succeeding the election; and

(iii) The Board of Supervisors of Montgomery County and the State Board of Education, with the assistance of the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), shall apportion the territory of the new consolidated school district located outside the Winona corporate limits into two (2) new proportionately equal single member board of trustee election districts. The board of supervisors shall thereafter publish the same in some newspaper of general circulation in the county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each school district in the county, the new district lines will thereafter be effective for the November 2018 special election. Any school board member of the former school districts residing in the proper territory shall be eligible for appointment or election to the new Board of Trustees for Winona-Montgomery Consolidated School District.

(c) Any school district affected by the required administrative consolidation in the county that does not voluntarily consolidate as ordered by the State Board of Education shall be administratively consolidated by the State Board of Education, to be effective immediately upon action of the State Board of Education. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into one

(1) consolidated school district by July 1 following the motion to consolidate. The affected school districts shall comply with any consolidation order issued by the State Board of Education.

(4)(a) On July 1, 2018, following the motion of the State Board of Education to consolidate school districts in Montgomery County, the Montgomery County School District shall be abolished. All real and personal property which is owned or titled in the name of the school district located in such former school district shall be transferred to the Winona-Montgomery Consolidated School District as of July 1, 2018.

(b) The new board of trustees of the Winona-Montgomery Consolidated School District shall be responsible for establishing the contracts for operations, teachers, principals, clerical and administrative staff personnel for the 2018-2019 school year and each school year thereafter.

(c) The superintendent of the Winona-Montgomery Consolidated School District shall be appointed by the board and is authorized to appoint an assistant superintendent, but in no instance shall the administrative leadership of the Winona-Montgomery Consolidated School District exceed three (3) assistant superintendents to be appointed by the superintendent of the Winona-Montgomery Consolidated School District.

(d) It shall be the responsibility of the board of trustees to prepare and approve the budget of the respective new reorganized district, and the board of trustees may use staff from the former school district to prepare the budget. Any transfer of the assets, real or personal property of the Montgomery County School District mandated by this section shall be final and conclusive for the purposes of the transfer of property required by this section to effectuate the administrative consolidation.

(e) Any person or school district aggrieved by an order of the successor newly selected board of trustees of the Winona-Montgomery Consolidated School District pursuant to the required administrative consolidation may appeal therefrom within ten (10) days from the date of the adjournment of the meeting at which such order is entered. The appeal shall be taken in the same manner as appeals are taken from judgments or decisions of the board of supervisors as provided in Section 11-51-75, the provisions of which shall be fully applicable to appeals taken hereunder. The board of trustees of the Winona-Montgomery Consolidated School District shall not pass upon or approve or disapprove any such order until the time for an appeal therefrom has expired, nor shall the board pass upon or approve or disapprove any such order from which an appeal is taken until said appeal has been finally determined.

(5) Nothing in this section shall be construed to require the closing of any school or school facility, unless the facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Mont-

gomery County pursuant to the requirements of this section. Beginning with the insurance cafeteria plan year of November 1, 2018, the consolidated districts shall fall under all insurance plans and policies elected by the Winona-Montgomery Consolidated School District, including the group term life insurance described in Section 25-15-9(7).

(7) The County Board of Education and the Superintendent of Education of the former Montgomery County School District and the local school board and Superintendent of Schools of the Winona Municipal Separate School District shall cooperate with the State Department of Education, as soon as practicable after July 1, 2016, for the planning and transition of programs, services and alignment of curriculum for the administratively consolidated school districts.

(8) It shall be the responsibility of the Board of Supervisors of Montgomery County to provide office, furnishing and utilities for the administrative Office of the Superintendent of the Winona-Montgomery Consolidated School District.

(9) One (1) year prior to the date of consolidation, a financial advisor and/or other facilitator with school district experience may be assigned by the Mississippi Department of Education to oversee the budgeting and financial matters relating to the consolidation of the districts slated for consolidation. The financial advisor and/or facilitator may, at the discretion of the Mississippi Department of Education, continue duties for one year after the consolidation to ensure that all financial matters are in place. All financial expenditures of districts that are closing must be approved by the financial advisor and/or facilitator. If the superintendent and/or school board approves expenditures outside of this approval, they shall be personally liable for the excess expenditures. The State Board of Education shall determine the compensation to be paid to the financial advisor and/or facilitator which shall be paid by the local school district.

**HISTORY: Laws, 2016, ch. 465, § 1, eff from and after July 1, 2016.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. In (3)(b)(iii), "2018" was substituted for "2017." The Joint Committee ratified the correction at its August 5, 2016, meeting.

## § 37-7-104.5. Administrative consolidation of Lumberton Public School District; agreement between school boards of Lumberton Public, Lamar County and Poplarville Separate School Districts to abolish and dissolve Lumberton School District; Commission on Administrative Consolidation of the Lumberton Public School District created; composition and purpose.

(1) Not later than July 1, 2019, the local school boards of the Lumberton Public School District, Lamar County School District and Poplarville Separate

School District shall, under the authority provided in Section 37-7-103, enter into an agreement, by which the approval of such agreement shall be spread upon each board's minutes of their regularly scheduled meetings or at special meetings called for the specific purpose of such agreement, to abolish and dissolve the Lumberton School District and its central administrative office to be effective for the start of the 2019-2020 school year. The agreement between each school board made parties thereto must consider:

(a) The composition of the district boundaries of the Lumberton Public School District, as it existed on January 1, 2016, to ensure that the student population to be transferred to the Lamar County School District and Poplarville Separate School District does not disparately impact the desegregation of either school district entering into agreement;

(b) The territory embraced by Lumberton, Mississippi, located within the bounded territory of Lamar County, from which the school district to be abolished by agreement draws a portion of its student population, shall be absorbed into the boundary lines of the Lamar County School District, which shall spread a legal description of the district's new boundaries upon its minutes. It shall be the responsibility of the board of supervisors of such county to apportion the school district into five (5) new single-member board of education election districts, which shall be consistent with the apportioned population of the existing Lamar County School District and that portion of the former Lumberton Public School District situated within Lamar County as the former district existed on July 1, 2016. The board of supervisors of the county shall thereafter publish the same in some newspaper of general circulation in the county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each appropriate school district in the county, the new district lines will thereafter be effective; and

(c) The territory embraced by Lumberton, Mississippi, located within the bounded territory of Pearl River County, from which the school district to be abolished by agreement draws a portion of its student population, shall be absorbed into the boundary lines of the Poplarville Separate School District as added territory, which shall spread a legal description of the district's new boundaries with added territory upon its minutes. It shall be the responsibility of the municipal governing authority having jurisdiction over the territory wherein the Poplarville Separate School District is located to provide residents of the added territory with representation on the school board as authorized under the provisions of Section 37-7-203(1), which shall be consistent with the apportioned population of the existing Poplarville Separate School District and the percentage of the student population from that portion of the former Lumberton Public School District situated in Pearl River County within the added territory of the Poplarville Separate School District as the former district existed on July 1, 2016. The municipal governing authority shall thereafter publish the same in some newspaper of general circulation in the county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each appropriate school district in the county, the new member districts will thereafter be effective; and

(2)(a) There is hereby created and established an advisory council to be known as the Commission on the Administrative Consolidation of the Lumberton Public School District. The commission shall be composed of eleven (11) members as follows:

(i) The State Superintendent of Education, or his designee, who shall serve as Chairman of the Commission;

(ii) The Superintendent of the Lumberton Public School District;

(iii) The Superintendent of Education of the Lamar County School District;

(iv) The Superintendent of the Poplarville Separate School District;

(v) Two (2) members of the Lamar County Board of Education to be appointed by the Lamar County Board of Education;

(vi) One (1) member of the Board of Trustees of the Poplarville Separate School District to be appointed by the Board of Trustees of the Poplarville Separate School District;

(vii) One (1) member of the Board of Trustees of the Lumberton Public School District to be appointed by the Board of Trustees of the Lumberton Public School District;

(viii) One (1) resident of the area which comprises the Lumberton Public School District to be appointed by the State Superintendent of Public Education;

(ix) One (1) resident of the area which comprises the Lamar County School District to be appointed by the Lamar County Board of Supervisors; and

(x) One (1) resident of the area which comprises the Poplarville Separate School District to be appointed by the Pearl River Board of Supervisors.

(b) The Commission on the Administrative Consolidation of the Lumberton Public School District shall meet within thirty (30) days of July 1, 2016, upon the call of the State Superintendent of Education and shall hold hearings and meet as necessary and develop a report to the Legislature, the Governor and the State Board of Education on or before December 1, 2017, with the agreed-upon plan for proceeding with the abolition and dissolving of the Lumberton Public School District, which shall include a reasonable effort to maintain and operate a school in the former Lumberton Public School District by which students desiring may, in the discretion of the parents of such students, attend.

(c) The plan may provide an option for students enrolled in the schools of the Lumberton Public School District on May 1, 2017, and children registered for kindergarten on that date with the Lumberton Public School District may be granted an automatic transfer by the Lamar County Board of Education or the Poplarville School Board, as determined by the agreed-upon plan.

(3) Nothing in this section shall be construed to require the closing or maintenance of any school or school facility, unless the facility is an unneeded

administrative office located within a school district which has been abolished under the provisions of this section.

**HISTORY: Laws, 2016, ch. 463, § 1, eff from and after July 1, 2016.**

### § 37-7-104.6. Administrative consolidation of Leflore County and Greenwood Municipal Separate School Districts into new countywide school district designated Greenwood-Leflore School District; procedure.

(1) In Leflore County, Mississippi, in which are located, as of January 1, 2016, two (2) school districts, there shall be an administrative consolidation of those school districts in the county into one (1) new countywide school district to be designated as Greenwood-Leflore School District which shall consist of the territory of the former Leflore County School District and the Greenwood Municipal Separate School District, effective on July 1, 2019. At such time that the administrative consolidation becomes effective, the central administrative office of the Greenwood-Leflore School District shall be current Greenwood Public School District Central Office, located in Greenwood, Mississippi.

(2) As soon as practicable, a financial advisor and/or other facilitator with school district experience may be assigned by the Mississippi Department of Education to oversee the budgeting and financial matters relating to the consolidation of the districts slated for consolidation. The financial advisor and/or facilitator may, at the discretion of the Mississippi Department of Education, continue duties for one (1) year after the consolidation to ensure that all financial matters are in place. All financial expenditures of districts that are closing must be approved by the financial advisor and/or facilitator. If the superintendent and/or school board approves expenditures outside of this approval, they shall be personally liable for the excess expenditures. The State Board of Education shall determine the compensation to be paid to the financial advisor and/or facilitator which shall be paid by the local school district to which the financial advisor and/or facilitator is assigned.

(3)(a) On July 1, 2018, the State Board of Education shall serve the local school boards of the Leflore County School District and the Greenwood Municipal Separate School District with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section. The State Board of Education shall require the administrative consolidation of Leflore County School District and the Greenwood Municipal Separate School District on or before July 1, 2019. In the new Greenwood-Leflore School District, there shall be a new phased-in County Board of Education comprised of five (5) members elected to staggered terms of office from single member supervisors districts in the manner prescribed in this subsection. Current members of the Board of Trustees of the Greenwood Public School District serving on November 1, 2017, shall continue in office as the new County Board of Education of the Greenwood-Leflore School District until their successors are elected as follows:

(i) The two (2) appointed board members of the Greenwood Public School District whose terms are nearest to expiration shall expire on January 1, 2019, and thereafter become permanently elected positions to be filled by persons elected as board members from Supervisors Districts 2 and 3 in a November 2018 election held for that purpose, in the manner prescribed in Section 37-7-203, and the newly elected members will take office on January 1, 2019, for a term of four (4) years;

(ii) The final two (2) appointed board members of the Greenwood Public School District whose terms are the farthest removed from expiration shall expire on January 1, 2020, and thereafter become permanently elected positions to be filled by persons elected as board members from Supervisors Districts 4 and 5 in a November 2019 election held for that purpose, in the manner prescribed in Section 37-7-203, and the newly elected members will take office on January 1, 2020, for a term of four (4) years; and

(iii) One (1) appointed board member of the Greenwood Public School District whose term is next nearest to expiration shall expire on January 1, 2021, and thereafter become a permanently elected position to be filled by a person elected as a board member from Supervisors District 1 in a November 2020 election held for that purpose, in the manner prescribed in Section 37-7-203, and the newly elected members will take office on January 1, 2021, for a term of four (4) years.

(b) All subsequent members shall be elected for a term of four (4) years at the regular general election held on the first Monday in November next preceding the expiration of the term of office of the respective members, and shall take office on January 1 next succeeding the election.

(c) No previous school board member of the former school district that was placed under conservatorship residing in the proper territory shall be eligible for selection to the new Board of Education for the Greenwood-Leflore Consolidated School District.

(d) The State Board of Education shall declare that the territory embraced by Leflore County, Mississippi, shall be the boundary lines for the territory of the new Greenwood-Leflore School District and shall spread a legal description of the new school district on the minutes of its August 2018 meeting and shall serve the applicable school boards and the board of supervisors with an adequate legal description of these new boundaries. Any school board member of the former school districts residing in the proper supervisors district shall be eligible for election to the new Board of Education for the Greenwood-Leflore School District unless such person was serving as a member of the board when either district subject to consolidation under this section was placed under conservatorship, which shall render the board member ineligible for election.

(e) Any school district affected by the required administrative consolidation in the county that does not voluntarily consolidate as ordered by the State Board of Education shall be administratively consolidated by the State Board of Education, to be effective immediately upon action of the State

Board of Education. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into the Greenwood-Leflore School District by July 1, 2019, following the motion to consolidate. The affected school districts shall comply with any consolidation order issued by the State Board of Education.

(4) The successor Greenwood-Leflore Board of Education shall appoint a new Superintendent of Schools for the Greenwood-Leflore School District to be selected no later than July 1, 2019, in the manner provided in Section 37-9-13. The position of Greenwood-Leflore Superintendent of Schools shall be an appointive position. The successor Greenwood-Leflore Board of Education shall also employ central office staff for the Greenwood-Leflore School District no later than July 1, 2019.

(5)(a) On January 1, 2020, following the motion of the State Board of Education to consolidate school districts in Leflore County and the Greenwood Municipal Separate School Districts, the Leflore County and the Greenwood Municipal Separate School Districts and the former school boards of those districts shall be abolished. All real and personal property which is owned or titled in the name of the school district located in such former school districts shall be transferred to the new Greenwood-Leflore Consolidated School District.

(b) The new board of trustees of the Greenwood-Leflore Consolidated School District shall be responsible for establishing the contracts for teachers, principals, clerical and administrative staff personnel for the 2019-2020 school year and each school year thereafter.

(c) The new board of trustees for the Greenwood-Leflore Consolidated School District shall appoint the superintendent of schools for the school district. The superintendent of schools for the Greenwood-Leflore Consolidated School District may appoint three (3) assistant superintendents of schools for the district, but in no instance shall the administrative leadership of the Greenwood-Leflore Consolidated School District have more than three (3) assistant superintendents of education. The subsequent superintendent of schools of the consolidated school district shall not be elected, but shall thereafter be appointed by the successor board of trustees in the manner provided in Section 37-9-25. It shall be the responsibility of the successor board of trustees to prepare and approve the budget of the new consolidated district, and the successor board of trustees may use staff from the former school districts to prepare the budget. Any proposed order of the State Board of Education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation.

(d) Any person or school district aggrieved by an order of the successor newly selected board of trustees of the Greenwood-Leflore Consolidated School District pursuant to the required administrative consolidation may appeal therefrom within ten (10) days from the date of the adjournment of the meeting at which such order is entered. The appeal shall be taken in the same manner as appeals are taken from judgments or decisions of the board of supervisors as provided in Section 11-51-75, the provisions of which shall be fully applicable to appeals taken hereunder. The board of trustees of the Greenwood-Leflore Consolidated School District shall not pass upon or approve or disapprove any such order until the time for an appeal therefrom has expired, nor shall the board pass upon or approve or disapprove any such order from which an appeal is taken until said appeal has been finally determined.

(6) Nothing in this section shall be construed to require the closing of any school or school facility, unless the facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(7) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Leflore County pursuant to this section. The consolidated districts shall make an election within one (1) year of consolidation concerning the group term life insurance described in subsection (6) of Section 25-15-9.

(8) The County Board of Education and the Superintendent of Education of the former Leflore County School District and the local school board and Superintendent of Schools of the Greenwood-Leflore Public School District shall cooperate with the State Department of Education, as soon as practicable after July 1, 2016, for the planning and transition of programs, services and alignment of curriculum for the administratively consolidated school districts.

**HISTORY: Laws, 2016, ch. 464, § 1, eff from and after July 1, 2016.**

## § 37-7-104.7. Administrative consolidation of Holmes County and Durant Public School Districts into new countywide school district designated Holmes County Consolidated School District; procedure.

(1) In Holmes County, Mississippi, in which are located, as of January 1, 2016, two (2) school districts, there shall be an administrative consolidation of all of those school districts in the county into one (1) new countywide school district to be designated as Holmes County Consolidated School District which shall consist of the territory of the former Holmes County School District and the Durant Public School District, effective on July 1, 2018. At such time that the administrative consolidation becomes effective, the central administrative office of the Holmes County Consolidated School District shall be located in Lexington, Mississippi.

(2) Within two (2) years prior to the date of consolidation, or as soon as practicable after July 1, 2016, a financial advisor and/or other facilitator with

school district experience may be assigned by the Mississippi Department of Education to oversee the budgeting and financial matters relating to the consolidation of the districts slated for consolidation. The financial advisor and/or facilitator may, at the discretion of the Mississippi Department of Education, continue duties for one (1) year after the consolidation to ensure that all financial matters are in place. All financial expenditures of districts that are closing must be approved by the financial advisor and/or facilitator. If the superintendent and/or school board approves expenditures outside of this approval, they shall be personally liable for the excess expenditures. The State Board of Education shall determine the compensation to be paid to the financial advisor and/or facilitator which shall be paid by the local school district to which the financial advisor and/or facilitator is assigned.

(3)(a) On or before July 1, 2017, the State Board of Education shall serve the local school boards of the Holmes County School District and the Durant Public School District with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section. The State Board of Education shall provide for the administrative consolidation of Holmes County School District and the Durant Public School District on or before July 1, 2018. In the new Holmes County Consolidated School District, there shall be a new county board of education elected in a November 2017 special election, which shall be called by the Governor for that purpose. The new county board of education shall be elected and the terms of office established as provided in Section 37-5-7(3). The State Board of Education shall declare that the territory embraced by Holmes County, Mississippi, shall be the boundary lines for the territory of the new Holmes County Consolidated School District and shall spread a legal description of the new school district on the minutes of its August 2017 meeting and shall serve the applicable school boards and the board of supervisors with an adequate legal description of these new boundaries. It shall be the responsibility of the board of supervisors of such county to apportion the newly consolidated school district into five (5) new single member board of education election districts, which shall be consistent with the supervisors district lines in the county. The board of supervisors of the county shall thereafter publish the same in some newspaper of general circulation in the county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each appropriate school district in the county, the new district lines will thereafter be effective for the November 2017 special election.

(b) Any school district affected by the required administrative consolidation in Holmes County that does not voluntarily consolidate as ordered by the State Board of Education shall be administratively consolidated by the State Board of Education, to be effective on July 1 following the November 2017 special election of the new school board members. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into the Holmes County Consolidated School District by July 1, 2018, following the election of the new board of trustees. The affected school districts shall comply with any consolidation order issued by the State Board of Education on or before July 1 following the election of the new board of trustees.

(4)(a) On July 1, 2018, following the election of the new board of trustees of the Holmes County Consolidated School District, the former county board of education for Holmes County and the former board of trustees of the Durant Public School Districts shall be abolished. All real and personal property which is owned or titled in the name of the school district located in such former school districts shall be transferred to the new Holmes County Consolidated School District.

(b) The new board of trustees of the Holmes County Consolidated School District shall be responsible for establishing the contracts for teachers, principals, clerical and administrative staff personnel for the 2018-2019 school year and each school year thereafter.

(c) The new board of trustees for the Holmes County Consolidated School District shall appoint the superintendent of schools for the school district. The superintendent of schools for the Holmes County Consolidated School District may appoint an assistant superintendent of schools for the district, but in no instance shall the administrative leadership of the Holmes County Consolidated School District have more than one (1) assistant superintendent of education. The subsequent superintendent of schools of the consolidated school district shall not be elected, but shall thereafter be appointed by the successor board of trustees in the manner provided in Section 37-9-25. It shall be the responsibility of the successor board of trustees to prepare and approve the budget of the new consolidated district, and the successor board of trustees may use staff from the former school districts to prepare the budget. Any proposed order of the State Board of Education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation.

(d) Any person or school district aggrieved by an order of the successor newly selected board of trustees of the Holmes County Consolidated School District pursuant to the required administrative consolidation may appeal therefrom within ten (10) days from the date of the adjournment of the meeting at which such order is entered. The appeal shall be taken in the same manner as appeals are taken from judgments or decisions of the board of supervisors as provided in Section 11-51-75, the provisions of which shall be fully applicable to appeals taken hereunder. The board of trustees of the Holmes County Consolidated School District shall not pass upon or approve or disapprove any such order until the time for an appeal therefrom has expired, nor shall the board pass upon or approve or disapprove any such order from which an appeal is taken until said appeal has been finally determined.

(5) Nothing in this section shall be construed to require the closing of any school or school facility, unless the facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Holmes County pursuant to this section. The consolidated districts shall make an election within one (1) year of consolidation concerning the group term life insurance described in subsection (6) of Section 25-15-9.

(7) The County Board of Education and the Superintendent of Education of the former Holmes County School District and the local school board and Superintendent of Schools of the Durant Public School District shall cooperate with the State Department of Education, as soon as practicable after July 1, 2016, for the planning and transition of programs, services and alignment of curriculum for the administratively consolidated school districts.

**HISTORY: Laws, 2016, ch. 466, § 1, eff from and after July 1, 2016.**

## § 37-7-104.8. Administrative consolidation of Chickasaw County and Houston Municipal Separate School Districts into new school district designated Chickasaw County School District; procedure.

(1) In Chickasaw County, Mississippi, in which are located, as of January 1, 2017, three (3) school districts, there shall be an administrative consolidation of two (2) of those school districts in the county as a new school district to be designated as Chickasaw County School District which shall consist of the territory of the former Chickasaw County School District and the Houston Municipal Separate School District, effective on July 1, 2021. At such time that the administrative consolidation becomes effective, the central administrative office of the new Chickasaw County School District shall be located in Houston, Mississippi.

(2) On July 1, 2020, the Superintendent of Schools of the former Houston Municipal Separate School District shall continue to serve in like administrative capacity for the purpose of managing the transition for the consolidation of the former Chickasaw County School District and the Houston Municipal Separate School District. The said Superintendent of Schools shall be responsible for the administration, management and operation of the school district from July 1, 2020, until July 1, 2021, including, but not limited to, the following activities: (a) merging the existing budgets with the budget of the new consolidated school district; (b) nonrenewal of central office staff as necessary; (c) construction of a new salary scale for licensed and nonlicensed employees; (d) supplemental duties of school district employees; (e) assist local officials with school tax assessment; (f) appointment of assistant superinten-

dents for the new district not to exceed three (3); and (g) veto authority over decisions of the former school boards until the new Chickasaw County Board of Education is in place. The said Superintendent of Schools shall cooperate with the State Department of Education, as soon as practicable after July 1, 2017, for the planning and transition of programs, services and alignment of curriculum for the administratively consolidated school districts.

(3) On July 1, 2020, the State Board of Education shall serve the Chickasaw County Board of Education and the Board of Trustees of the Houston Municipal Separate School District with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section. The State Board of Education shall require the administrative consolidation of the Chickasaw County School District and the Houston Municipal Separate School District on or before July 1, 2021.

(4) In the new Chickasaw County School District, there shall be an Interim County Board of Education elected in a November 2020 special election which shall be called by the Governor for that purpose. The State Board of Education shall declare that the following territory shall be the election districts for the Interim Chickasaw County Board of Education, and members shall be qualified electors residing in that district: (a) three (3) members shall be elected at large from the territory of the former Houston School District; and (b) two (2) members shall be elected at large from the territory of the former Chickasaw County School District. Members elected in the November 2020 special election shall serve terms of three (3) years beginning on January 1, 2021. There shall be a new Chickasaw County Board of Education for the Chickasaw County School District, elected on the first Tuesday after the first Monday in November 2023, at the same time and in the same manner as the statewide general election is held and conducted, for that purpose. The new county board of education shall be elected and the terms of office established as provided in Section 37-5-7(5). Any school board member of the former school districts residing in the proper territory shall be eligible for election to the new Chickasaw County Board of Education.

(5) The State Board of Education shall declare that the territory embraced by Chickasaw County, Mississippi, excluding the territory of Okolona Separate School District, shall be the boundary lines for the territory of the new Chickasaw County School District and shall spread a legal description of the new school district on the minutes of its August 2020 meeting and shall serve the applicable school boards and the board of supervisors with an adequate legal description of these new boundaries. Any school district affected by the required administrative consolidation in the county that does not voluntarily consolidate as ordered by the State Board of Education shall be administratively consolidated by the State Board of Education, to be effective immediately upon action of the State Board of Education. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting adminis-

trative consolidation into the Chickasaw School District by July 1, 2021, following the motion to consolidate. The affected school districts shall comply with any consolidation order issued by the State Board of Education.

(6) The Interim Chickasaw County Board of Education shall conduct a search for a new Superintendent of Schools for the Chickasaw County School District to be selected no later than July 1, 2021, in the manner provided in Section 37-9-13 and the Superintendent of Schools serving on that date may be selected to continue in office. The position of Chickasaw County Superintendent of Schools shall be an appointive position. No superintendent serving in a school district placed under conservatorship shall be eligible for appointment as a superintendent or assistant superintendent in the new Chickasaw County School District. The Interim Chickasaw County Board of Education shall also employ central office staff for the Chickasaw County School District no later than July 1, 2021, or as soon thereafter as is practicable.

(7) On January 1, 2021, following the motion of the State Board of Education to consolidate school districts in Chickasaw County and the Houston Municipal Separate School Districts, the Chickasaw County School District and the Houston Municipal Separate School District and the former school boards of those districts shall be abolished. All real and personal property which is owned or titled in the name of the school district located in such former school districts shall be transferred to the new Chickasaw County School District. The Superintendent of Schools and the County Board of Education of the new Chickasaw County School District shall be responsible for establishing the contracts for teachers, principals, clerical and administrative staff personnel for the 2020-2021 school year and thereafter. It shall be the responsibility of the Superintendent of Schools and the County Board of Education of the new Chickasaw County School District to prepare and approve the budget of the new reorganized district. Any proposed order of the State Board of Education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation.

(8) From and after July 1, 2021, all outstanding debt of the former Chickasaw County School District and the Houston Municipal Separate School District shall be assumed by and become the debt of the new Chickasaw County School District. Any debt assumed by the Chickasaw County School District secured by a special ad valorem tax shall become secured by and payable from a mandatory, special ad valorem tax which shall be levied on all taxable property in the territory of the former Houston Municipal Separate School District or the former Chickasaw County School District, as the case may be, by the levying authority of the new Chickasaw County School District. It is the intent of the Legislature that any such pledges of the former school districts will remain in effect and that the pledged funds will be available to the new Chickasaw County School District to pay its debt to which the funds are pledged. The Board of Supervisors of Chickasaw County shall be the “levying authority” for the new Chickasaw County School District.

(9) Nothing in this section shall be construed to require the closing of any school or school facility, unless the facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(10) The State Board of Education, acting through the new Superintendent of Schools, shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Chickasaw County and Houston, Mississippi, pursuant to this section. The consolidated district shall make an election within one (1) year of consolidation concerning the group term life insurance described in Section 25-15-9(7).

(11) For the initial two (2) years following the administrative consolidation required by this section, conditioned on approval by the U.S. Department of Education, the State Department of Education shall grant a waiver of accountability and state assessment requirements to the new Chickasaw County School District for the student population enrolled therein from the former Chickasaw County School District and the Houston Municipal Separate School District, when determining the new consolidated school district accreditation level based on the performance and accountability rating model.

**HISTORY: Laws, 2017, ch. 436, § 1, eff from and after July 1, 2017.**

## § 37-7-105. Procedure for alteration of district boundaries or consolidation of school districts by school boards; effect of consolidation as to contracts and taxation.

(1) In cases where two (2) or more school boards determine that it is appropriate that their existing boundaries be altered to provide better service to students, each school board shall enter on its minutes the legal description of new district lines and shall publish the order altering such districts in some newspaper published and having a general circulation in such district(s) once each week for three (3) consecutive weeks, which said order shall be duly certified by the president of said school board. If no newspaper be published in said school district, then such order shall be published for the required time in some newspaper having a general circulation therein, and, in addition, a copy of said order shall be posted for the required time at three (3) public places in the school district. The order so published shall contain a provision giving notice that said order shall become final thirty (30) days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final at said time. However, in the event twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of any school district altered by such order shall file a petition with the school board, within thirty (30) days after the first publication of said notice, protesting against the alteration of such district, then an election shall be called and held, on order of the school board, by the county election commission(s), after publication of

legal notice of such election, which said election shall be held within thirty (30) days after the first publication of the notice of such election. At such election the question shall be submitted to the qualified electors of the district or districts in which a petition is filed as to whether or not such district or districts shall be altered as provided in the said order of the school board. If a majority of those voting in said election in each district affected and from which a petition is filed shall vote in favor of the order of the school board then such order shall become final. If a majority of those voting in said election in any district from which a petition is filed shall vote against the order of the school board then such order shall be void and of no effect and no further attempt to make the proposed change in such district shall be made for a period of at least two (2) years after the date of said election.

(2) When the orders of all boards adopting the new lines have been entered and are final, all orders shall be submitted to and considered by the State Board of Education as prescribed in Section 37-7-113, Mississippi Code of 1972. If the new lines are approved by the State Board of Education, the new district lines shall be submitted to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines are either precleared by the United States Department of Justice, or approved by the United States District Court, the State Board of Education shall formally declare the new lines as the new boundaries of the school districts.

(3) Should two (2) or more school districts determine that they wish to consolidate, the following actions shall be taken by the districts to perfect this consolidation: (a) Each board shall state its intent to consolidate with the other district or districts by passing a resolution of the board to that effect and spreading it on the minutes of the districts; and (b) each school board shall publish the order consolidating such districts in some newspaper having a general circulation in such district(s) once each week for three (3) consecutive weeks, which said order shall be duly certified by the president of said school board. The order so published shall contain a provision giving notice that said order shall become final thirty (30) days after the first publication of said notice unless a petition is filed protesting against same within such time. In the event no such petition be filed, the said order shall become final on said date. However, in the event twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of any one (1) of the school districts affected by the proposed consolidation shall file a petition with the applicable school board, within thirty (30) days after the first publication of said notice, protesting against the consolidation of such district or districts, then an election shall be called and held in such school districts where petitions were filed, on order of the school board, by the county election commission(s), after publication of legal notice of such election, which said election shall be held within thirty (30) days after the first publication of the notice of such election. At such election the question shall be submitted to the qualified electors of any

district or districts in which petitions were filed as to whether or not such district or districts shall be consolidated as provided in the said order of the school boards. If a majority of those voting in said election shall vote in favor of the order of the school boards then such order shall become final. Should less than a majority of the electors of any single school district vote in favor of the adoption of the proposed consolidation, such school district shall not participate in any voluntary consolidation as authorized in this subsection, and the proposed consolidation plan adopted by such districts shall be void.

After the order of the local school boards becomes final, it shall be submitted to and considered by the State Board of Education. If approved by the State Board of Education, the consolidation shall be submitted by the local school boards to the appropriate federal agencies for approval. After all preclearance has been received, the State Board of Education shall declare the new boundaries of the consolidated school district and all action shall proceed as outlined under law using the new boundaries.

Upon preclearance of such consolidation, all school boards shall approve a joint resolution for the election of five (5) new board members from single member districts as provided by law. These elections shall be scheduled prior to May 1 of the year in which the consolidation is to become effective. The new consolidated district shall become effective on July 1 of that same year. The superintendent of any district created through consolidation shall be appointed if all of the school districts which are consolidating had previously appointed their superintendents. The superintendent of any district created through consolidation shall be elected if all of the school districts which are consolidating had previously elected their superintendents. In the event two (2) or more school districts consolidating under the provisions of this section shall have previously appointed one or more superintendents and elected the remainder, the superintendent shall be elected or appointed in accordance with the method utilized by the consolidating school district or districts with the larger or largest student populations. The superintendent shall begin work as the superintendent on July 1 of such year when the consolidation becomes effective. The order to consolidate shall invalidate the contracts of the superintendents of the preceding districts and shall terminate the term of the superintendent if that person was elected. The order to consolidate shall invalidate the term of any school board member beyond July 1 of that year whether they are elected or appointed. Any school board member from any school district may be eligible to run for election to the new consolidated school board.

Each school board shall be responsible for establishing the contracts for teachers and principals for the next school year with the consultation of the successor school board if they have been selected at the time such decisions are to be made. The selection of administrator in the central administration office shall be the responsibility of the successor school board. No existing dates for renewal of contracts shall invalidate the responsibility of the successor school board in taking such action. The successor school board may enter into these contracts at any time following their election, but no later than July 1 of that year. It shall also be the responsibility of the successor school board to prepare and approve the budget of the new district. The successor school board may use staff from the existing districts to prepare the budget. The school board shall have authority to approve the budget prior to the July 1 date and shall follow the time line established for budget preparation under the law. Should either district at the time of consolidation have more liabilities than assets, then the successor school board shall be authorized to levy an ad valorem tax upon the taxable property in the territory of the district where the deficit exists, a tax not to exceed five percent (5%) of the existing tax levy for the sole purpose of reducing the deficit. When the deficit is eliminated, then such tax levy shall be terminated. Any taxes levied to bring about the equalization of funding, to equalize pay scales or levied in the territory of a newly created district where a deficit exists, shall constitute a "new program" for the purposes of ad valorem tax limitations as prescribed in Sections 27-39-321 and 37-57-107, Mississippi Code of 1972.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 53; Laws, 1991, ch. 471, § 2, eff August 14, 1991 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).**

**Editor's Notes —** Laws of 1990, Chapter 589, § 47, amended this section effective July 1, 1990, provided that the Legislature, by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declare that sufficient funds were dedicated and made available for the implementation of Chapter 589. However, funds were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions were not implemented. The text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 471, § 2, on August 14, 1991.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

**Federal Aspects—** Section 5 of the Voting Rights Act of 1965, see 52 USCS § 10304.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Relationship to other laws.
3. —Section 37-7-103.

### 1. In general.

A public school board had the authority to consolidate schools within its district and to reassign students en masse; the plan was not a "reorganization of the school district" within the meaning of § 37-7-105. Section 37-7-105 and its petition, publication and referendum procedures do not apply to everything the school board may wish to abolish, alter or reorganize. The statute applies only where the school board "abolishes, alters or reorganizes a school district." The phrase "school district" imports the geographic boundaries of the district and perhaps the corporate organization or structure thereof. The school board's plan did not alter the existing structure of the school district, which remained a countywide district, and did not reorganize corporate structure, and therefore §§ 37-7-103 and 37-7-105 did not apply. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

**2. Relationship to other laws.**

The general language of Code 1972 § 37-7-605 [repealed], providing that additional territory adjoining a municipal separate school district may be added to any municipal separate school district by the county board of education, presupposes that the county board of education will comply with the requirements of Code 1972 § 37-7-105 as to what the county board must do in order to tender "good title" to the territory which it is requesting be added to the municipal separate school district, including the requirement that the county board publish its order altering the district. Strong v. Pearl Municipal Separate School Dist., 350 So. 2d 1388, 1977 Miss. LEXIS 2255 (Miss. 1977).

**3. —Section 37-7-103.**

Section 37-7-105 merely establishes procedural requisites that must be met in carrying out the general grant of authority contained § 37-7-103. If, under § 37-7-103, the school board decides to "reorganize, change or alter the boundaries" of the district, § 37-7-105 requires that it publish its intention to do so and receive petitions from objectors. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

### RESEARCH REFERENCES

**ALR.**

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 56, 57.

**CJS.**

78 C.J.S., Schools and School Districts §§ 45-48, 110 et seq.

**Law Reviews.**

Miller, Who shall rule and govern? Local legislative delegations, racial politics, and the Voting Rights Act. 102 Yale L. J. 105, October 1992.

## § 37-7-107. Abolition of school district pursuant to petition filed by electorate.

If a petition signed by two-thirds (⅔) of the qualified electors of an existing school district shall be filed with the school board requesting that such district be abolished, then the school board shall enter an order abolishing such school district. Such order shall become final without publication thereof upon such date as may be fixed by the school board but not later than July 1 next succeeding the date of such order.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 54, eff from and after July 1, 1987.**

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 56, 57.

**CJS.**
78 C.J.S., Schools and School Districts §§ 110 et seq.

## § 37-7-109. Annexation of territory to different district or reorganization into new district pursuant to petition filed by electorate; effect upon outstanding bonds or other indebtedness.

If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the school board requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, the said school board, after consideration thereof, and with the consent and approval of the school board of the district to which such territory is to be annexed, if such be the case, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. However, before doing so, the school board must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the school board but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in such territory from assessment and liability for the payment of the outstanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebtedness existing at the time the territory is taken from such district. In addition thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 55, eff from and after July 1, 1987.**

### JUDICIAL DECISIONS

**1. In general.**

Where a municipal separate school district was reconstituted in accordance with the law without any added territory, and thereafter the county school district was abolished and its territory accepted by and annexed to the municipal school district, all in strict accord with the relevant statutes, municipal authorities rather than county authorities were thereafter the proper parties to assess and collect school taxes throughout the county. Winston County v. Woodruff, 187 So. 2d 299, 1966 Miss. LEXIS 1341 (Miss. 1966).

### OPINIONS OF THE ATTORNEY GENERAL

There presently exists no statutory authority by which school board may split an existing district into two or more parts and thus create more school districts; however, electors of city desiring its own district may, pursuant to Section 37-7-109, initiate petition to have it established as separate district. Willis, Jan. 27, 1994, A.G. Op. #94-0029.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 56, 57.

**CJS.**

78 C.J.S., Schools and School Districts §§ 45-48.

## § 37-7-111. Effect of abolition or alteration of district upon bonds or other indebtedness of district; territory of abolished district to be annexed to another district.

When any school district is abolished or altered under the provisions of this article, the abolition or alteration thereof shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished or altered from year to year according to the terms of such indebtedness until same shall be fully paid. No existing school district shall be abolished unless the territory comprising such district shall be annexed to another district in the same order abolishing the former district.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 56, eff from and after July 1, 1987.**

### JUDICIAL DECISIONS

**1. In general.**

Where a municipal separate school district was reconstituted in accordance with the law without any added territory, and thereafter the county school district was abolished and its territory accepted by and annexed to the municipal school district, all in strict accord with the relevant statutes, municipal authorities rather than county authorities were thereafter the proper parties to assess and collect school taxes throughout the county. Winston County v. Woodruff, 187 So. 2d 299, 1966 Miss. LEXIS 1341 (Miss. 1966).

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 53-55.

**CJS.**
78 C.J.S., Schools and School Districts §§ 109, 111.

## § 37-7-113. Approval of reorganization, abolition or alteration of school district by State Board of Education.

Notwithstanding any of the foregoing provisions, it is hereby expressly provided that no order of the school board reorganizing, abolishing or altering any school district, whether same be taken with or without a petition therefor, shall be final unless and until said proposed reorganization, alteration or abolition shall be submitted to and approved by the State Board of Education. In the event the proposed action shall be disapproved by the State Board of Education, the same shall be void and of no effect. In the event of the filing of any petitions with the school board under the provisions of said sections, the school board shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the school board upon such question shall be final and conclusive for the purpose of the submission of said matter to the State Board of Education and the approval or disapproval of the action by said board.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 57, eff from and after July 1, 1987.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

### JUDICIAL DECISIONS

**1. In general.**
Although the county board of education, being the trustees in countywide districts are the ones to organize the schools detailing what grades should be taught there, and designating what pupils should attend, this does not mean that reorganization or rearrangement of the district would not be subject to approval by the state educational finance commission. Board of Educ. v. Wilburn, 223 So. 2d 665, 1969 Miss. LEXIS 1289 (Miss. 1969), overruled, In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

### OPINIONS OF THE ATTORNEY GENERAL

Sections 37-7-103, 37-7-113 and 37-7-311 allow a school board to organize its schools so as to serve the best interests of the schools and ultimately the students, and to avoid unnecessary duplication. Where the actions of local school boards do nothing to alter the existing geographical features, boundaries, or corporate structure of the school districts there is no necessity to seek State Board of Education approval. Burnham, February 15, 1995, A.G. Op. #95-0029.

## § 37-7-115. Appeals from school board orders.

Any person aggrieved by an order of the school board adopted under any of the foregoing provisions may appeal therefrom within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Said appeal shall be taken in the same manner as appeals are taken from judgments or decisions of the board of supervisors as provided in Section 11-51-75, Mississippi Code of 1972, the provisions of which shall be fully applicable to appeals taken hereunder. The State Board of Education shall not pass upon or approve or disapprove any such order until the time for an appeal therefrom shall have expired, nor shall said board pass upon or approve or disapprove any such order from which an appeal is taken until said appeal shall have been finally determined.

**HISTORY: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 58, eff from and after July 1, 1987.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

### JUDICIAL DECISIONS

**1. In general.**

Circuit court lacked jurisdiction over a high school's attempted appeal of an expulsion decision by a school board because the student's bill of exceptions lacked the signature of the school board president and, as such, the bill of exceptions did not comply with Miss. Code Ann. §§ 37-7-115 and 11-51-75. M.L.R. v. Pontotoc City Sch. Dist. Bd. of Trs., 46 So. 3d 874, 2010 Miss. App. LEXIS 597 (Miss. Ct. App. 2010).

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 61, 62.

16A Am. Jur. Legal Forms 2d (Rev), Schools, § 229:23 (notice of appeal of change in school district boundaries).

**CJS.**

78 C.J.S., Schools and School Districts §§ 88-95, 110.

## §§ 37-7-117 and 37-7-119. Repealed.

Repealed by Laws, 1986, ch. 492, § 59, eff from and after July 1, 1987.

§ 37-7-117. [Codes, 1942, § 6274-06.5; Laws, 1959, Ex Sess, ch. 21]

§ 37-7-119. [Codes, 1942, § 6328-96; Laws, 1958, ch. 308, §§ 1-4]

**Editor's Notes —** Former § 37-7-117 related to the retroactive nature of alterations to school district boundaries.

Former § 37-7-119 related to the validation of school districts as legally existing political subdivisions of the state.

# ARTICLE 5.

# BOARDS OF TRUSTEES; QUALIFICATIONS, SELECTION AND MEETINGS.

Sec.
37-7-201. Qualifications for office of trustee.
37-7-203. Composition of boards of trustees of municipal separate school districts and certain mayor-council forms of government; qualifications, selection, and terms of office of members of boards.
37-7-204. Appointment of interim member to fill vacancy in board of trustees for countywide municipal separate school district.
37-7-205. Repealed.
37-7-207. Selection and term of trustees of consolidated districts.
37-7-208. Authorization to expend funds to cover cost and expenses of litigation relating to and implementation of single member school board trustee election districts.
37-7-209. Election of trustees generally.
37-7-211. Filing of petition and affidavit by candidate for office of trustee.
37-7-213. Repealed.
37-7-215. Time of election and runoff election.
37-7-217. Conduct of election; certification of results; runoffs.
37-7-219. Preparation of list of qualified electors.
37-7-221. Election of consolidated or consolidated line school district trustees; procedure generally.
37-7-223. Election of consolidated or consolidated line school district trustees; time and manner of election.
37-7-225. Election of consolidated or consolidated line school district trustees; filing of petition of nomination by candidate.
37-7-227. Election of consolidated or consolidated line school district trustees; ballot; determination of results; runoffs.
37-7-229. Election of consolidated or consolidated line school district trustees; preparation of list of qualified electors; compensation of election commissioners.
37-7-231 through 37-7-235. Repealed.

## § 37-7-201. Qualifications for office of trustee.

In order for a person to be eligible to hold the office of trustee of any school district, such person must be a bona fide resident and a qualified elector of such school district, and, in the case of a school district lying in two or more counties, but not including municipal separate school districts, such person must be a bona fide resident and a qualified elector of the territory entitled to such representation on the board.

**HISTORY: Codes, 1942, § 6328-07; Laws, 1953, Ex Sess, ch. 12, § 7; Laws, 1964, ch. 391, § 1; Laws, 1966, ch. 409, § 1; Laws, 1966, ch. 410, § 1; Laws, 1968, ch. 400, eff from and after passage (approved June 24, 1968).**

### OPINIONS OF THE ATTORNEY GENERAL

A qualified individual who is not a resident of a city having a separate school district but who resides in the district may be lawfully appointed school board trustee. White, Apr. 9, 2004, A.G. Op. 04-0149.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 74, 75.

**CJS.**
78 C.J.S., Schools and School Districts §§ 204, 205, 209, 210.

### § 37-7-203. Composition of boards of trustees of municipal separate school districts and certain mayor-council forms of government; qualifications, selection, and terms of office of members of boards.

(1) Except as otherwise provided in subsections (3) and (4) of this section, the boards of trustees of all municipal separate school districts created under this chapter, either with or without added territory, shall consist of five (5) members, each to be chosen for a term of five (5) years, but so chosen that the term of office of one (1) member shall expire each year. In the event the added territory of a municipal separate school district furnishes fifteen percent (15%) or more of the pupils enrolled in the schools of such district, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate limits. In the event the added territory of a municipal separate school district furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the board of trustees of such school district shall be residents of the added territory outside the corporate limits. In the event the added territory of a municipal separate school district in a county in which Mississippi Highways 8 and 15 intersect furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then the five (5) members of the board of trustees of such school district shall be elected at large from such school district for a term of five (5) years each except that the two (2) elected trustees presently serving on such board shall continue to serve for their respective terms of office. The three (3) appointed trustees presently serving on such board shall continue to serve until their successors are elected in March of 1975 in the manner provided for in Section 37-7-215. At such election, one (1) trustee shall be elected for a term of two (2) years, one (1) for a term of three (3) years and one (1) for a term of five (5) years. Subsequent terms for each successor trustee shall be for five (5) years. In the event one (1) of two (2) municipal separate school districts located in any county with two (2) judicial districts, District 1 being comprised of Supervisors Districts 1, 2, 4 and 5, and District 2 being comprised of Supervisors District 3, with added territory embraces three (3) full supervisors districts of a county, one (1) trustee shall be elected from each of the three (3) supervisors districts outside the corporate limits of the municipality. In the further event that the territory

of a municipal separate school district located in any county with two (2) judicial districts, District 1 being comprised of Supervisors Districts 1, 2, 4 and 5, and District 2 being comprised of Supervisors District 3, with added territory embraces four (4) full supervisors districts in the county, and in any county in which a municipal separate school district embraces the entire county in which Highways 14 and 15 intersect, one (1) trustee shall be elected from each supervisors district.

Except as otherwise provided herein, the trustees of such a municipal separate school district shall be elected by a majority of the governing authorities of the municipality at the first meeting of the governing authorities held in the month of February of each year, and the term of office of the member so elected shall commence on the first Saturday of March following. In the case of a member of the board of trustees who is required to come from the added territory outside the corporate limits as is above provided, such member of the board of trustees shall be elected by the qualified electors of the school district residing in such added territory outside the corporate limits at the same time and in the same manner as is otherwise provided in this article for the election of trustees of school districts other than municipal separate school districts.

In the event that a portion of a county school district is reconstituted, in the manner provided by law, into a municipal separate school district with added territory and in the event that the trustees to be elected from the added territory are requested to be elected from separate election districts within the added territory, instead of elected at large, by the Attorney General of the United States as a result of and pursuant to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended, and in the event the added territory of a municipal separate school district of a municipality furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then two (2) members of the board of trustees shall be residents of the added territory outside the corporate limits of such municipality and shall be elected from special trustee election districts by the qualified electors thereof as herein provided. The board of trustees of the school district shall apportion the added territory into two (2) special trustee election districts as nearly as possible according to population and other factors heretofore pronounced by the courts. The board of trustees of the school district shall thereafter publish the same in a newspaper of general circulation within that school district for at least two (2) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the board of trustees of the school district, the new district lines shall thereafter be effective. Any person elected from the new trustee election districts constituted herein shall be elected in the manner provided for in Section 37-7-215 for a term of five (5) years. Any vacancy in the office of a trustee elected from such trustee election district, whether occasioned by redistricting or by other cause, shall be filled by appointment of the governing authorities of the municipality, provided that the person so appointed shall serve only until the next general election following his appointment, at which time a person shall be elected for the remainder of the unexpired term in the manner provided in Section 37-7-215.

In any county organizing a countywide municipal separate school district after January 1, 1965, the trustees thereof to be elected from outside the municipality, such trustees shall be elected by the board of supervisors of such county, and the superintendent of such school district shall have authority to pay out and distribute the funds of the district. In the event a municipal separate school district should occupy territory in a county other than that in which the municipality is located and fifteen percent (15%) or more of the pupils enrolled in the schools of such district shall come from the territory of the district in the county other than that in which the municipality is located, the territory of such county in which the municipality is not located shall be entitled to one (1) member on the board of trustees of such school district. The trustee shall be a resident of the territory of that part of the district lying in the county in which the municipality is not located and shall be elected by the qualified electors of the territory of such county at the same time and in the same manner as is provided for the election of trustees of school districts other than municipal separate school districts having territory in two (2) or more counties.

All vacancies shall be filled for the unexpired terms by appointment of the governing authorities of the municipality; except that in the case of the trustees coming from the added territory outside the corporate limits, the person so appointed shall serve only until the next general election following his appointment, at which time a person shall be elected for the remainder of the unexpired term in the manner otherwise provided herein.

No person who is a member of such governing body, or who is an employee of the municipality, or who is a member of the county board of education, or who is a trustee of any public, private or sectarian school or college located in the county, inclusive of the municipal separate school district, or who is a teacher in or a trustee of the school district, shall be eligible for appointment to the board of trustees.

(2) In counties of less than fifteen thousand (15,000) people having a municipal separate school district with added territory which embraces all the territory of a county, one or more trustees of the school district shall be nominated from each supervisors district upon petition of fifty (50) qualified electors of that supervisors district, or twenty percent (20%) of the qualified electors of such district, whichever number shall be smaller. One (1) trustee must be elected from each supervisors district of the county. In such counties embraced entirely by a municipal separate school district, there shall be no county board of education after the formation of such district, and the county superintendent of education shall act as superintendent of schools of the district and shall be appointed by the board of trustees of that district, and the provisions of subsection (1) of this section and the first paragraph of Section 37-7-211 shall not apply to such districts.

(3) In municipalities designated as having a mayor-council form of government under Chapter 8, Title 21, Mississippi Code of 1972, and having a

population in excess of one hundred thousand (100,000) according to the 2000 federal decennial census, the boards of trustees of the municipal separate school district located in the municipality may, if authorized by ordinance of the municipal governing authority, consist of seven (7) members residing in each of the seven (7) wards in the municipality, to be appointed by the mayor and confirmed by the city council as follows: (a) each board member shall reside in the ward from which he is appointed; (b) members serving on March 31, 2010, shall continue to serve until a new term commences and new members shall be selected from wards not currently represented on the board; (c) one (1) of the two (2) additional appointments shall serve a term of five (5) years and one (1) for a term of four (4) years, with all subsequent appointments for a five-year term; and (d) each new appointment shall be made by the mayor and confirmed by the city council of the municipality at the first meeting of the governing authorities held in the month of June following March 31, 2010, and thereafter each year, and the term of office of each member so selected shall commence on the first Saturday of July following.

(4)(a) Beginning in 2017, in any municipal separate school district that is traversed by the Escatawpa River and in which Interstate Highway 10 and Mississippi Highway 63 intersect, the board of trustees of the municipal separate school district shall consist of five (5) members, each to be elected for a term of four (4) years in the manner provided in this subsection. Within forty-five (45) days after July 1, 2017, the municipal governing authority shall apportion the municipal separate school district, including any added territory outside the corporate limits, into five (5) special trustee election districts as nearly equal as possible according to population, incumbency and other factors pronounced by the courts before August 8, 2017. The municipal governing authority shall place upon its minutes the boundaries determined for the new five (5) trustee election districts and shall publish the same in a newspaper of general circulation within the school district for at least three (3) consecutive weeks. After having given notice of publication and recording the same upon the minutes of the municipal governing authority, the new district lines shall be effective.

(b) On the first Tuesday after the first Monday in November 2017, and every four (4) years thereafter, an election shall be held in the municipal separate school district for local school board members from trustee election districts 1, 3 and 5 in the same manner and at the same time as the general municipal election is held and conducted, for the purpose of electing the board of trustees of the municipal separate school district. All members of the board of trustees elected pursuant to this paragraph (b) shall take office on the first Monday of January immediately following the date of their election. However, in order to provide for an orderly transition, the term of each member of the board of trustees serving on July 1, 2017, which otherwise would expire after the first Monday in July 2018, shall expire on the first Monday of January 2018. If no individual qualifies for the elective office of school district trustee, the trustee for that specific trustee district shall be filled by appointment of the municipal governing authority; however, the person so appointed to fill the vacancy may serve only until the first Monday in January 2019, at which time the trustee elected pursuant to this subsection shall take office for the remainder of the unexpired initial term.

From and after January 1, 2018, any vacancy on the board of trustees shall be filled by appointment by the remaining members of the board of trustees within sixty (60) days after the vacancy occurs. The appointee must be selected from the qualified electors of the trustee election district in which the vacancy occurs. The appointee shall serve until the first Monday of January succeeding the next general municipal election, at which election a member from that trustee election district shall be elected for a full term.

(c) On the first Tuesday after the first Monday in November 2018, and every four (4) years thereafter, an election shall be held in the municipal separate school district for local school board members from trustee election districts 2 and 4 in the same manner and at the same time as the Congressional mid-term election is held and conducted, for the purpose of electing the board of trustees of the municipal separate school district. All members of the board of trustees elected pursuant to this paragraph (c) shall take office on the first Monday of January immediately following the date of their election. However, in order to provide for an orderly transition, the term of each member of the board of trustees serving on July 1, 2018, which otherwise would expire after the first Monday in July 2018, shall expire on the first Monday of January 2019. If no individual qualifies for the elective office of school district trustee, the trustee for that specific trustee district shall be filled by appointment of the municipal governing authority; however, the person so appointed to fill the vacancy may serve only until the first Monday in January 2020, at which time the trustee elected pursuant to this subsection shall take office for the remainder of the unexpired initial term.

From and after July 1, 2020, any vacancy on the board of trustees shall be filled by appointment by the remaining members of the board of trustees within sixty (60) days after the vacancy occurs. The appointee must be selected from the qualified electors of the trustee election district in which the vacancy occurs. The appointee shall serve until the first Monday of July succeeding the next general municipal election, at which election a member from that trustee election district shall be elected for a full term.

**HISTORY: Codes, 1942, §§ 6238-07, 6328-21; Laws, 1953, Ex Sess, ch. 12, § 7; ch. 17, § 1; Laws, 1956, ch. 273; Laws, 1964, ch. 391, § 1; Laws, 1966, ch. 409, § 1; Laws, 1966, ch. 410, § 1; Laws, 1968, ch. 400; Laws, 1975, ch. 306; Laws, 1985, ch. 509, § 1; Laws, 2002, ch. 598, § 3; Laws, 2009, ch. 470, § 2; Laws, 2010, ch. 454, § 1; Laws, 2017, ch. 436, § 4, eff from and after July 1, 2017.**

**Editor's Notes** — Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987.

The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2002, ch. 598 § 3.

By letter dated August 28, 2009, the United States Attorney General interposed no objection to the change in the general election date provided for in ch. 470, Laws of

2009, and this section reflects that change, effective August 28, 2009.

As for the proposed changes from a plurality vote to a majority vote requirement for county school board members, for trustees for certain municipal separate school districts and for trustees for special municipal school districts, and the requirement that a runoff election be held three weeks after the election if no candidate received a majority, the U.S. Attorney General requested additional information from the state. After review of the information provided by the state, the U.S. Attorney General concluded that the state had not met its burden of showing that the proposed changes had neither a discriminatory purpose nor a discriminatory effect, and by letter dated March 24, 2010, objected to the proposed change from plurality to majority vote and the runoff requirement provided for in Chapter 470, Laws of 2009.

**Cross References —** Eligibility of county electorate to participate in election of county superintendent, see § 37-5-71.

Election of trustees elected under provisions of subsection (1) of this section, see § 37-7-209 and §§ 37-7-211 through 37-7-219.

Filing of petition of candidacy and affidavit of eligibility under this section, see § 37-7-211.

Selection of boards of trustees in certain special municipal county-wide school districts, see § 37-7-703.

Subsection (2) of this section, regarding a municipal separate school district embracing an entire county in counties of less than 15,000 population, governing the selection of district school superintendent, see § 37-9-13.

**Federal Aspects—** Provisions of Section 5 of the Voting Rights Act of 1965, see 52 USCS § 10304.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Constitutionality.

**1. In general.**

The Mississippi courts had the power to decide whether § 5 of the Voting Rights Act applied to the change in election procedures sought by respondents, and must withhold further implementation of the disputed change until the parties demonstrate compliance with § 5. Both the language and purposes of the Act refute the notion that a state court asked to implement a change in the State's voting laws cannot inquire whether the change is subject to § 5 but must ignore that circumstance and enter a decree violating federal law. Section 14(b) of the Act, which provides that no court other than the District Court for the District of Columbia shall have jurisdiction to enter a declaratory judgment pursuant to § 5 governs only declaratory judgments approving proposed voting procedure changes. And nothing in the provisions of § 5, requiring an action under that section to be heard by a three-judge federal district court, or in the provisions of § 12(f) of the Act, giving federal district courts jurisdiction of proceedings under that section, negates the presumption, that, at least when the issue arises collaterally, state courts have the power to decide whether a proposed change in election procedures requires preclearance under § 5. Granting state courts such power helps to insure compliance with the preclearance scheme. Hathorn v. Lovorn, 457 U.S. 255, 102 S. Ct. 2421, 72 L. Ed. 2d 824, 1982 U.S. LEXIS 125 (U.S. 1982).

**2. Constitutionality.**

That part of the statute providing for the selection and term of trustees of consolidated school districts that reads "in which Highways 14 and 15 intersect" was declared unconstitutional and such offensive language would be stricken from the statute; the remaining portion of the statute was declared constitutional. Lovorn v. Hathorn, 365 So. 2d 947, 1978 Miss. LEXIS 2430 (Miss. 1978), cert. denied, 441 U.S. 946, 99 S. Ct. 2167, 60 L. Ed. 2d 1049, 1979 U.S. LEXIS 1857 (U.S. 1979).

## OPINIONS OF THE ATTORNEY GENERAL

School board vacancy would be filled by appointing qualified elector to serve until first Saturday in March, at which time election to fill remainder of term would be conducted in accordance with Miss. Code Section 37-7-203. Foxworth, Apr. 21, 1993, A.G. Op. #93-0188.

The authority to make an appointment to fill a vacancy in a municipal school district with added territory lies with the city council – the mayor and board of aldermen – and not the mayor acting individually. Tisdale, Feb. 3, 2000, A.G. Op. #2000-0025.

The statute does not, on its face, preclude the appointment of members from added territory consisting of less than 15%, although such appointment is not mandatory. Smith, June 23, 2000, A.G. Op. #2000-0288.

Once appointed, a trustee of a municipal separate school district serves for a term of five years and can only be removed pursuant to a specific statutory provision. Brahan, Apr. 27, 2001, A.G. Op. #01-0239.

A qualified individual who is not a resident of a city having a separate school district but who resides in the district may be lawfully appointed school board trustee. White, Apr. 9, 2004, A.G. Op. 04-0149.

A candidate for Trustee of a Municipal Separate School District must meet all of the mandatory statutory requirements in order to qualify, including a properly notarized affidavit filed by 5:00 p.m. on the qualifying deadline, as required by Miss. Code Ann. § 37-7-211. If only one person properly qualifies for the office, no election or notice of election is necessary and the person properly qualified shall, if otherwise qualified, be declared elected without opposition. Gregory, February 1, 2007, A.G. Op. #07-00057, 2007 Miss. AG LEXIS 4.

## RESEARCH REFERENCES

**ALR.**

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 73 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 204, 205, 209, 210, 213, 214.

## § 37-7-204. Appointment of interim member to fill vacancy in board of trustees for countywide municipal separate school district.

In the event that a vacancy occurs in the office of any elected trustee of a countywide municipal separate school district, and the next regular school board election at which the vacancy may be filled is less than one (1) year from the date of the resignation, the school board of the district may, in its discretion, take action to appoint an interim board member to fill the vacancy until a duly qualified successor takes office. The interim board member shall serve until such time as the successor board member is duly elected to fill the unexpired term, pursuant to an election held at the next regularly scheduled school board election held in the county.

**HISTORY: Laws, 1995, ch. 425, § 1, eff from and after August 25, 1995 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).**

**Editor's Notes** — The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 425, § 1.

### OPINIONS OF THE ATTORNEY GENERAL

A school board member may be appointed only if a vacancy exists, and a vacancy does not exist until the resigning or vacating member has departed office, so the departing member is not entitled to vote on a successor appointment. Johnson, Aug. 8, 1997, A.G. Op. #97-0227.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 72 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 255, 271-277.

## § 37-7-205. Repealed.

Repealed by Laws, 1987, ch 307, § 47, eff from and after March 3, 1987.

[Codes, 1942, § 6328-07; Laws, 1953, Ex Sess, ch. 12, § 7; Laws, 1964, ch. 391, § 1; Laws, 1966, ch. 409, § 1; Laws, 1966, ch. 410, § 1; Laws, 1968, ch. 400]

**Editor's Notes** — Former § 37-7-205 permitted a county board of education to serve as trustees of county-wide school districts.

## § 37-7-207. Selection and term of trustees of consolidated districts.

(1) All school districts reconstituted or created under the provisions of Article 1 of this chapter, and which lie wholly within one (1) county, but not including municipal separate and countywide districts, shall be governed by a board of five (5) trustees. The first board of trustees of such districts shall be appointed by the county board of education, and the original appointments shall be so made that one (1) trustee shall be appointed to serve until the first Saturday of March following such appointments, one (1) for one (1) year longer, one (1) for two (2) years longer, one (1) for three (3) years longer, and one (1) for four (4) years longer. After such original appointments, the trustees of such school districts shall be elected by the qualified electors of such school districts in the manner provided for in Sections 37-7-223 through 37-7-229, with each trustee to be elected for a term of five (5) years. The five (5) members of the board of trustees of such consolidated school district shall be elected from special trustee election districts by the qualified electors thereof, as herein provided. The board of trustees of any such consolidated school district shall apportion the consolidated school district into five (5) special trustee election districts. The board of trustees of such school district shall place upon its

minutes the boundaries determined for the new five (5) trustee election districts. The board of trustees shall thereafter publish the same in a newspaper of general circulation within said school district for at least three (3) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the board of trustees, said new district lines shall thereafter be effective.

On the first Tuesday after the first Monday in November, in any year in which any consolidated school district shall elect to utilize the authority to create single member election districts, an election shall be held in each such district in this state for the purpose of electing the board of trustees of such district. At said election the member of the said board from District One shall be elected for a term of one (1) year, the member from District Two shall be elected for a term of two (2) years, the member from District Three shall be elected for a term of three (3) years, the member from District Four shall be elected for a term of four (4) years, and the member from District Five shall be elected for a term of five (5) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of five (5) years each. Trustees elected from single member election districts as provided above shall otherwise be elected as provided for in Sections 37-7-223 through 37-7-229. All members of the said board of trustees shall take office on the first Monday of January following the date of their election. All vacancies which may occur during a term shall be filled by appointment of the consolidated school district trustees, but the person so appointed shall serve only until the next general election following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as a trustee is elected for the full term then expiring. The person so elected to the unexpired term shall take office immediately. Said appointee shall be selected from the qualified electors of the district in which the vacancy occurs. In the event the school district is under conservatorship and no members of the board of trustees remain in office, the Governor shall call a special election to fill the vacancies and the said election will be conducted by the county election commission.

(2) All school districts reconstituted and created under the provisions of Article 1 of this chapter, which embrace territory in two (2) or more counties, but not including municipal separate school districts, shall be governed by a board of five (5) trustees. In making the original appointments, the several county boards of education shall appoint the trustee or trustees to which the territory in such county is entitled, and, by agreement between the county boards concerned, one (1) person shall be appointed to serve until the first Saturday of March following, one (1) for one (1) year longer, one (1) for two (2) years longer, one (1) for three (3) years longer and one (1) for four (4) years longer. Thereafter, such trustees shall be elected as is provided for in Sections 37-7-223 through 37-7-229, for a term of five (5) years. The five (5) members of the board of trustees of such line consolidated school district shall be elected from special trustee election districts by the qualified electors thereof, as herein provided. The existing board of trustees of such line consolidated school

district shall apportion the line consolidated school district into five (5) special trustee election districts. The board of trustees shall place upon its minutes the boundaries determined for the new five (5) trustee election districts. The board of trustees shall thereafter publish the same in a newspaper of general circulation within said school district for at least three (3) consecutive weeks; and after having given notice of publication and recording the same upon the minutes of the board of trustees, said new district lines shall thereafter be effective. Provided, however, that in any line consolidated school district encompassing two (2) or more counties created pursuant to Laws, 1953, Extraordinary Session, Chapter 12, Section 8, in which, as a condition precedent to the creation of said district, each county belonging thereto was contractually guaranteed to always have at least one (1) representative on said board, in order that said condition precedent may be honored and guaranteed, in any year in which the board of trustees of such line consolidated school district does not have at least one (1) member from each county or part thereof forming such district, the board of trustees in such district shall be governed by a board of a sufficient number of trustees to fulfill this guarantee, five (5) of whom shall be elected from the five (5) special trustee election districts which shall be as nearly equal as possible and one (1) member trustee appointed at large from each county not having representation on the elected board. In such cases, the board of supervisors of each county shall make written agreement to guarantee the manner of appointment of at least one (1) representative from each county in the district, placing such written agreement on the minutes of each board of supervisors in each county.

On the first Tuesday after the first Monday in November, in any year in which any line consolidated school district shall elect to utilize the authority to create single member election districts, an election shall be held in each such district in this state for the purpose of electing the board of trustees of such district. At said election the member of the said board from District One shall be elected for a term of one (1) year, the member from District Two shall be elected for a term of two (2) years, the member from District Three shall be elected for a term of three (3) years, the member from District Four shall be elected for a term of four (4) years, and the member from District Five shall be elected for a term of five (5) years. Thereafter, members shall be elected at general elections as vacancies occur for terms of five (5) years each. Trustees elected from single member election districts as provided above shall otherwise be elected as provided for in Sections 37-7-223 through 37-7-229. All members of the said board of trustees shall take office on the first Monday of January following the date of their election. In all elections, the trustee elected shall be a resident and qualified elector of the district entitled to the representation upon the board, and he shall be elected only by the qualified electors of such district. All vacancies which may occur during a term of office shall be filled by appointment of the consolidated line school district trustees, but the person so appointed shall serve only until the next general election following such appointment, at which time a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as the trustee is elected for the full term then expiring. The person so elected to the unexpired term shall take office immediately. In the event the school district is under conservatorship and no members of the board of trustees remain in office, the Governor shall call a special election to fill the vacancies and the said election will be conducted by the county election commission.

**HISTORY: Codes, 1942, § 6328-07; Laws, 1953, Ex Sess, ch. 12, § 7; Laws, 1964, ch. 391, § 1; Laws, 1966, ch. 409, § 1; Laws, 1966, ch. 410, § 1; Laws, 1968, ch. 400; Laws, 1981, ch. 409, § 1; Laws, 1988, ch. 523, § 1; Laws, 1990, ch. 567, § 1; Laws, 2002, ch. 598, § 4; Laws, 2013, ch. 331, § 3; Laws, 2013, ch. 363, § 3, eff July 16, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).**

**Editor's Notes —** This section was amended by two bills in 2013. The effective date of each of the two bills that amended this section, Chapter 331 (House Bill No. 975) and Chapter 363 (Senate Bill No. 2779), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bills were approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 331 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated July 9, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 331 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 331, so Chapter 331 became effective on the date of the response letter from the United States Attorney General, July 9, 2013.

Chapter 363 was not submitted before the *Shelby County* decision, but the Mississippi Attorney General's Office submitted Chapter 363 to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 16, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 363 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 363, so Chapter 363 became effective from and after July 16, 2013, the date of the United States Attorney General's response letter. Because that date is later than the date of the response letter for Chapter 331, the version of this section in Chapter 363 is the controlling version of this section.

As set out above, this section reflects the amendments to the section by Chapter 363.

Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987.

For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

Laws of 1953, Extraordinary Session, Chapter 12, Section 8, referred to in this section, and codified as § 37-7-101, was repealed by Laws of 1986, Chapter 492, § 59, effective from and after July 1, 1987.

Laws of 1990, Chapter 567, § 1, amended § 37-7-207, effective from and after such time as Laws of 1990, Chapter 567, § 1, was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Laws of 2002, Chapter 598, § 4, subsequently amended both the version of § 37-7-207 in force until Laws of 1990, Chapter 567, § 1, was effectuated under Section 5 of the Voting Rights Act of 1965 and the version effective from and after the date Laws of 1990, Chapter 567, § 1, was effectuated under Section 5 of the Voting Rights Act of 1965. By letter dated July 22, 2002, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of the section by Laws of 2002, Chapter 598, § 4. However, as of September 1, 2004, Laws of 1990, Chapter 567, § 1, had not been effectuated under Section 5 of the Voting Rights Act of 1965. Consequently, the version of § 37-7-207 that was to become effective from and after the date Laws of 1990, Chapter 567, § 1, was effectuated under Section 5 of the Voting Rights Act of 1965, has been omitted from the Code at the direction of Co-Counsel of the Joint Legislative Committee on Compilation, Revision and Publication of the Legislature.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Attending school in another district.

**1. In general.**

While school boards should not be allowed to operate indefinitely with less than 5 members, boards must be given a reasonable amount of time in which to find a suitable candidate; thus, a 4-member school board had the authority to approve a bond election and authorize the issuance of the bonds at a meeting which took place only 10 days after the fifth board member resigned. Shipman v. North Panola Consol. Sch. Dist., 641 So. 2d 1106, 1994 Miss. LEXIS 372 (Miss. 1994).

**2. Attending school in another district.**

Students who live in one school district organized under Ch 12, Laws of 1953, Ex. Session [Code 1942, §§ 6328-01 et seq.], may not attend school in another school district without the consent and approval of the board of trustees of the district wherein such students reside. Hinze v. Winston County Board of Education, 233 Miss. 867, 103 So. 2d 353, 1958 Miss. LEXIS 450 (Miss. 1958).

## OPINIONS OF THE ATTORNEY GENERAL

Appointment must be made to fill vacancy on school board within reasonable period of time; only court of competent jurisdiction can make adjudication as to what constitutes reasonable period of time. Minor, July 22, 1992, A.G. Op. #92-0545.

Mississippi Code Annotated Section 37-7-207 clearly and specifically requires county board of supervisors to affirmatively act to apportion consolidated school district into five special trustee election districts upon request of board of trustees of school district. Riddell, Jan. 25, 1994, A.G. Op. #93-1008.

If only one candidate qualifies by the deadline for accepting the petition and affidavit for a trustee candidate in a municipal separate school district, then there will not be an election and the single qualified candidate should be declared elected without opposition and should take office immediately. Fair, February 12, 1999, A.G. Op. #99-0057.

In the absence of a court order to the contrary, neither a school board nor a county board of supervisors may postpone an election that is set by statute. Rounsavall, Oct. 5, 2001, A.G. Op. #01-0622.

Under this section, one board of supervisors may not unilaterally make an appointment in the absence of an agreement; it is incumbent upon the counties that are affected to come to an agreement, but that agreement should be limited to the “manner” of the appointment (how nominations are to be made, nominee selection criteria, by whom the appointment is to be made, etc.) and should not attempt to limit the applicability of the statute. Clements, Oct. 2, 2002, A.G. Op. #02-0553.

RESEARCH REFERENCES

**ALR.**
Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 73, 76 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 211-214.

## § 37-7-208. Authorization to expend funds to cover cost and expenses of litigation relating to and implementation of single member school board trustee election districts.

The board of trustees of any consolidated school district may pay from non-minimum program funds the cost and expense of litigation involved by or resulting from the creation of or litigation to create single member school board trustee election districts, and pay from non-minimum program funds the cost or expense to implement any plan, decree or reorganization as approved by the court. Said payments by the board of trustees shall be deemed a "new program" under the provisions of Section 37-57-107, Mississippi Code of 1972, and any additional millage levied for such purpose and the revenue generated therefrom shall be excluded from the tax increase limitation prescribed in Sections 37-57-105 and 37-57-107. The board of supervisors of any county in which there is located such consolidated school district may, in its discretion, contribute out of county general funds to the cost and expense of such litigation and/or the cost of implementing such redistricting plan.

**HISTORY: Laws, 1988, ch. 523, § 2, eff from and after March 1, 1989 (the date the United States Attorney General interposed no objection to the addition of this section).**

## § 37-7-209. Election of trustees generally.

All elections of trustees who are elected under the provisions of subsection (1) of Section 37-7-203 shall be held and conducted in the manner and at the time provided for in Sections 37-7-211 through 37-7-219.

**HISTORY: Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; Laws, 1962, ch. 348; Laws, 1966, ch. 411, § 1; Laws, 1966, ch. 412, § 1; Laws, 1981, ch. 409, § 2, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection to the amendment of this section).**

**Cross References** — Alternate method for election of trustees of certain school districts, see §§ 37-7-221 through 37-7-229.

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

Selection of trustees in certain special municipal separate school districts, see §§ 37-7-703 through 37-7-717.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 73.

**CJS.**

78 C.J.S., Schools and School Districts §§ 219-236.

## § 37-7-211. Filing of petition and affidavit by candidate for office of trustee.

(1) The name of any qualified elector who is otherwise eligible under the provisions of subsection (1) of Section 37-7-203 who shall desire to be a candidate for the office of trustee must qualify in the following manner in order to be allowed to be considered for election. By 5:00 p.m. no more than ninety (90) days and not less than sixty (60) days before the election, he shall file with the county election commissioners a petition signed by not less than fifty (50) qualified electors of the area represented by the office which he seeks, either for a full term or an unexpired term, as the case may be, and an affidavit by the candidate offering for election stating his qualifications under the terms of the section. Where there are less than one hundred (100) qualified electors in said area represented by the trustee, it shall only be required that said petition of nomination be signed by at least twenty percent (20%) of the qualified electors in said area. The petition shall contain an affidavit certifying that all signatures are the personal signatures of each person whose name appears on the petition and that each person is a qualified elector.

(2) Unless the petition and affidavit required in subsection (1) of this section are filed by 5:00 p.m. not less than sixty (60) days prior to the election, the name of the candidate shall not be considered in the election, and votes cast for any person who has failed to qualify shall not be counted in the election.

(3) If after the time for candidates to file the petition and affidavit provided for in this section there should be only one (1) person to qualify for the office of trustee, then no election or notice of election shall be necessary and such person shall, if otherwise qualified, be declared elected without opposition.

**HISTORY: Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; Laws, 1962, ch. 348; Laws, 1966, ch. 411, § 1; Laws, 1966, ch. 412, § 1; Laws, 1977, ch. 425, § 1; Laws, 1981, ch. 409, § 3; Laws, 1982, ch. 356, § 1; Laws, 2000, ch. 592, § 17; Laws, 2012, ch. 516, § 1; Laws, 2014, ch. 422, § 1, eff from and after July 1, 2014.**

**Editor's Notes —** The United States Attorney General, by letter dated July 28, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2000, ch. 592, § 17.

By letter dated December 7, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 516, Laws of 2012.

**Cross References —** Inapplicability of the first paragraph of this section to counties of less than 15,000 people having a municipal separate school district with added territory which embraces all the territory of a county, see § 37-7-203.

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

### OPINIONS OF THE ATTORNEY GENERAL

Only school board members who are to be elected through the electoral process must meet the requirements set forth in the statute; these requirements do not apply to persons appointed to hold such office. Huddleston, May 15, 1998, A.G. Op. #98-0256.

A candidate for Trustee of a Municipal Separate School District must meet all of the mandatory statutory requirements in order to qualify, including a properly notarized affidavit filed by 5:00 p.m. on the qualifying deadline, as required by Miss. Code Ann. § 37-7-211. If only one person properly qualifies for the office, no election or notice of election is necessary and the person properly qualified shall, if otherwise qualified, be declared elected without opposition. Gregory, February 1, 2007, A.G. Op. #07-00057, 2007 Miss. AG LEXIS 4.

## § 37-7-213. Repealed.

Repealed by Laws, 2013, ch. 516, § 5, eff from and after December 7, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

§ 37-7-213. [Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; Laws, 1962, ch. 348; Laws, 1966, ch. 411, § 1; Laws, 1966, ch. 412, § 1; Laws, 1977, ch. 410, § 1; Laws, 1981, ch. 409, § 4, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Righs Act of 1965 to the amendment of this section).]

**Editor's Notes —** Former § 37-7-213 related to notice of election of school board trustees.

## § 37-7-215. Time of election and runoff election.

All such elections shall be held on the first Tuesday after the first Monday in November of each year and in the same manner as general state and county elections are held and conducted. In the event a runoff is necessary the runoff shall be held three (3) weeks thereafter.

**HISTORY: Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; Laws, 1962, ch. 348; Laws, 1966, ch. 411, § 1; Laws, 1966, ch. 412, § 1; Laws, 1978, ch. 469, § 1; Laws, 2009, ch. 470, § 4; Laws, 2012, ch. 516, § 2, eff December 7, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** By letter dated August 28, 2009, the United States Attorney General interposed no objection to the change in the general election date provided for in Chapter 470, Laws of 2009. As for the proposed changes from a plurality vote to a majority vote requirement for county school board members, for trustees for certain municipal separate school districts and for trustees for special municipal school districts, and the requirement that a runoff election be held three weeks after the election if no candidate received a majority, the U.S. Attorney General requested additional information from the state. After review of the information provided by the state, the U.S. Attorney General concluded that the state had not met its burden of showing that the proposed changes had neither a discriminatory purpose nor a discriminatory effect, and by letter dated March 24, 2010, objected to the proposed change from plurality to majority vote and the runoff requirement provided for in Chapter 470, Laws of 2009.

By letter dated December 7, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 516, Laws of 2012.

**Cross References —** Election of trustees from the added territory of certain municipal separate school districts, see § 37-7-203.

Method of conducting election, see § 37-7-217.

Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

### OPINIONS OF THE ATTORNEY GENERAL

With regard to the election of trustees of municipal separate school districts with added territory, clarifying legislation or additional preclearance of the trustee election procedures proposed by Chapter 470, Laws of 2009 (HB 877) is required to give effect to the Chapter 470 amendments, and until such time as additional language is precleared or clarifying legislation is enacted, trustee elections shall proceed as reflected in Sections 37-7-215 and 37-7-217 prior to the enactment of Chapter 470. Atkinson, December 18, 2009, A.G. Op. 09-00700, 2009 Miss. AG LEXIS 428.

## § 37-7-217. Conduct of election; certification of results; runoffs.

(1) The county election commissioners shall indicate on the ballot which of the persons whose names appear thereon are candidates for a full term, and which of such persons, if any, are candidates for an unexpired term or terms.

(2) The qualified electors of each school district operating under Section 37-7-215 shall vote on the date specified in that section and at the special trustee election districts.

(3) A person elected shall assume the duties of his office for the full term on the first day of January if the election is for the full term. A person elected to an unexpired term shall assume office immediately.

(4) The county election commissioners shall forthwith certify the results of the election to the superintendent of the municipal separate or special municipal separate school district, as the case may be, which certificate shall be delivered to such superintendent within five (5) days following the first election.

(5) If a person does not receive a majority of the votes cast at the election, a runoff shall be held between the two (2) persons receiving the highest number of votes at the first election.

**HISTORY: Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; Laws, 1962, ch. 348; Laws, 1966, ch. 411, § 1; Laws, 1966, ch. 412, § 1; Laws, 1978, ch. 469, § 2; Laws, 1981, ch. 409, § 5; Laws, 2009, ch. 470, § 5; Laws, 2012, ch. 516, § 3, eff**

**December 7, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** By letter dated August 28, 2009, the United States Attorney General interposed no objection to the change in the general election date provided for in Chapter 470, Laws of 2009. As for the proposed changes from a plurality vote to a majority vote requirement for county school board members, for trustees for certain municipal separate school districts and for trustees for special municipal school districts, and the requirement that a runoff election be held three weeks after the election if no candidate received a majority, the U.S. Attorney General requested additional information from the state. After review of the information provided by the state, the U.S. Attorney General concluded that the state had not met its burden of showing that the proposed changes had neither a discriminatory purpose nor a discriminatory effect, and by letter dated March 24, 2010, objected to the proposed change from plurality to majority vote and the runoff requirement provided for in Chapter 470, Laws of 2009.

By letter dated December 7, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 516, Laws of 2012.

**Cross References —** Applicability of this section to election of consolidated line district trustees, see § 37-7-221.

### OPINIONS OF THE ATTORNEY GENERAL

Statute contains provisions governing conduct of election and provides that qualified electors of school district will meet, organize, and elect trustees; there is no statutory provision for compensation of individuals who conduct this particular type of election. Gex, Feb. 7, 1990, A.G. Op. #90-0088.

With regard to the election of trustees of municipal separate school districts with added territory, clarifying legislation or additional preclearance of the trustee election procedures proposed by Chapter 470, Laws of 2009 (HB 877) is required to give effect to the Chapter 470 amendments, and until such time as additional language is precleared or clarifying legislation is enacted, trustee elections shall proceed as reflected in Sections 37-7-215 and 37-7-217 prior to the enactment of Chapter 470. Atkinson, December 18, 2009, A.G. Op. 09-00700, 2009 Miss. AG LEXIS 428.

## § 37-7-219. Preparation of list of qualified electors.

(1) For the purpose of holding such an election, it shall be the duty of the county election commissioners to prepare from the records in the office of the county registrar a list of the qualified electors of the school district who are eligible to participate in the election. The list shall be furnished to the election managers in each precinct, together with the ballots and other election supplies.

(2) In the event that any election precinct embraces parts of two (2) or more school districts it shall be the duty of the county election commissioners to prepare from the records in the office of the county registrar separate lists of the qualified electors of each school district who reside in the precinct and who are eligible to participate in the election. The election commissioners shall furnish to the election managers in the precinct separate ballots and separate ballot boxes and separate voting lists for each school district.

(3) For each day spent in carrying out the provisions of Sections 37-7-211 through 37-7-219, the county election commissioners shall be paid at the rate prescribed by law.

**HISTORY: Codes, 1942, § 6328-09; Laws, 1953, Ex Sess, ch. 12, § 9; Laws, 1962, ch. 348; Laws, 1966, ch. 411, § 1; Laws, 1966, ch. 412, § 1; Laws, 2012, ch. 516, § 4, eff December 7, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** By letter dated December 7, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 516, Laws of 2012.

**Cross References —** Applicability of this section to election of consolidated or consolidated line district trustees, see § 37-7-221.

### OPINIONS OF THE ATTORNEY GENERAL

Any expenses involved in preparing and printing the ballots and the preparation of the list of qualified electors in connection with an election and a run-off for the trustee for that part of a school district that fell outside the city limits was required to be borne by the school district; however, there was no authority for the compensation of individuals who conducted this particular type of election. Freeland, IV, Apr. 19, 2002, A.G. Op. #02-0187.

## § 37-7-221. Election of consolidated or consolidated line school district trustees; procedure generally.

The election of consolidated or consolidated line school district trustees shall be held in the manner provided for in Sections 37-7-223 through 37-7-229 rather than the method now provided by Sections 37-7-209 through 37-7-219.

**HISTORY: Codes, 1942, §§ 6328-11.3, 6328-11.4; Laws, 1960, ch. 304, §§ 1, 2; Laws, 1981, ch. 409, § 6, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).**

**Cross References —** Election of trustees of school districts generally, see §§ 37-7-209 through 37-7-229.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 56, 57.

**CJS.**
78 C.J.S., Schools and School Districts §§ 219-236.

## § 37-7-223. Election of consolidated or consolidated line school district trustees; time and manner of election.

All elections of consolidated or consolidated line school district trustees shall be held on the first Tuesday after the first Monday in November of each year in the same manner as general state and county elections are held and conducted.

**HISTORY: Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; Laws, 1981, ch. 409, § 7, eff from and after July 31, 1981 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).**

**Cross References** — Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

## § 37-7-225. Election of consolidated or consolidated line school district trustees; filing of petition of nomination by candidate.

The county election commissioners shall place the name of any person eligible to hold the office of trustee on the ballot used in the election, provided that such candidate shall have filed with the county registrar, not more than ninety (90) days and by 5:00 p.m. not less than sixty (60) days prior to the date of such election, a petition of nomination signed by not less than fifty (50) qualified electors of the school district. Where there are less than one hundred (100) qualified electors in said district, it shall only be required that said petition of nomination be signed by at least twenty percent (20%) of the qualified electors of such school district. If such person be a candidate for an unexpired term, he shall indicate the term for which he is a candidate in such petition; otherwise he shall be deemed to be a candidate for a full term.

If after the time for candidates to file the petition of nomination provided for herein there should be only one (1) person to qualify for the office of trustee, then no election or notice of election shall be necessary and such person shall, if otherwise qualified, be declared elected without opposition.

**HISTORY: Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; Laws, 1977, ch. 425, § 2; Laws, 1982, ch. 356, § 2; Laws, 1989, ch. 392, § 1; Laws, 2000, ch. 592, § 18, eff from and after July 28, 2000, the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section.**

**Editor's Notes** — The United States Attorney General, by letter dated July 28, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2000, ch. 592, § 18.

**Cross References** — Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

## § 37-7-227. Election of consolidated or consolidated line school district trustees; ballot; determination of results; runoffs.

(1) The county election commissioners shall indicate on the ballot which of the persons whose names appear thereon are candidates for a full term, and

which of such persons, if any, are candidates for an unexpired term or terms. The candidate who receives a majority of the votes cast, either for a full term or for an unexpired term or terms, as indicated on the ballot, shall be declared elected, and the person or persons elected to a full term shall assume the duties of his office on the first day of January of the year following such election. The person or persons elected to an unexpired term(s) shall assume office immediately. If no candidate receives a majority of the votes cast at the election, a runoff shall be held in the same manner three (3) weeks after the election between the two (2) candidates receiving the highest number of votes upon the first ballot.

(2) Notwithstanding any other provision of law, if an election for school board trustees occurs on a Tuesday, during a general election, any runoff for such election shall occur three (3) weeks after the election.

**HISTORY: Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; Laws, 1981, ch. 409, § 8; Laws, 2008, ch. 505, § 1, eff July 21, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes —** On July 21, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 505.

**Cross References —** Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

## § 37-7-229. Election of consolidated or consolidated line school district trustees; preparation of list of qualified electors; compensation of election commissioners.

For the purpose of holding such election, it shall be the duty of the county election commissioners to prepare from the records in the office of the county registrar a list of the qualified electors of the school district in which such election is to be held who are eligible to participate in the election. The list shall be furnished to the poll managers in each precinct, together with the ballots and other election supplies.

In the event that any election precinct embraces parts of two (2) or more school districts it shall be the duty of the county election commissioners to prepare from the records in the office of the county registrar separate lists of the qualified electors of each school district who reside in the precinct and who are eligible to participate in the election. The election commissioners shall furnish to the poll managers in the precinct separate ballots and separate ballot boxes and separate voting lists for each school district.

For each day spent in carrying out the provisions of Sections 37-7-225 through 37-7-229 the county election commissioners shall be paid at the rate prescribed by law.

**HISTORY: Codes, 1942, § 6328-11.4; Laws, 1960, ch. 304, § 2; Laws, 2017, ch. 441, § 186, eff from and after July 1, 2017.**

**Cross References —** Applicability of this section to election of trustees of consolidated or consolidated line school districts, see §§ 37-7-207, 37-7-221.

### OPINIONS OF THE ATTORNEY GENERAL

This section does require that the election commissioners of each county prepare separate lists of the qualified electors of each of the single-member election districts for each county election precinct containing part of the school district. Eskridge, August 16, 1996, A.G. Op. #96-0390.

## §§ 37-7-231 through 37-7-235. Repealed.

Repealed by Laws, 1986, ch. 492, § 45, eff from and after July 1, 1987.
§ 37-7-231. [Codes, 1942, § 6328-22; Laws, 1953, Ex Sess, ch. 17, § 2]
§ 37-7-233. [Codes, 1942, § 6328-23; Laws, 1953, Ex Sess, ch. 17, § 3]
§ 37-7-235. [Codes, 1942, § 6328-23.5; Laws, 1964, ch. 418]

**Editor's Notes —** Former § 37-7-231 related to the organization of the board of trustees of school districts.

Former § 37-7-233 provided for meetings of boards of trustees of municipal separate school districts and consolidated school districts.

Former § 37-7-235 provided for reimbursement of travel expenses for members of the board of trustees of municipal separate school districts.

# ARTICLE 7.

# BOARDS OF TRUSTEES; GENERAL POWERS AND DUTIES.

Sec.
37-7-301. General powers and duties.
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37-7-323. Application and enforcement of general criminal laws of state.
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37-7-339. Extended day and school year programs; funding; authority to adopt orders, policies, rules and regulations; goal.
37-7-341. Expenditure of funds for student field trips to nonprofit museums.
37-7-342. Use of service or assistance dogs trained to alert to symptoms of illness or disability authorized in all district facilities.
37-7-343. Authority to enter into contracts for training and professional development of district employees.
37-7-345. Authorization to establish regional educational service agency; agency to be organized as nonprofit tax exempt corporation; operation and management by public advisory board; board of directors; Executive Director; powers and responsibilities of educational service agency.
37-7-346. Regional educational service agencies and State Department of Education to jointly develop a plan for increasing duties and responsibilities of the agencies.

## § 37-7-301. General powers and duties.

The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:

(a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school;

(b) To introduce public school music, art, manual training and other special subjects into either the elementary or high school grades, as the board shall deem proper;

(c) To be the custodians of real and personal school property and to manage, control and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or homebound program for misconduct in the school or on school property, as defined in Section 37-11-29, on the road to and from school, or at any school-related activity or event, or for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district;

(f) To visit schools in the district, in their discretion, in a body for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To support, within reasonable limits, the superintendent, principal and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools students with what appears to be infectious or contagious diseases; provided, however, such student may be allowed to return to school upon presenting a certificate from a public health officer, duly licensed physician or nurse practitioner that the student is free from such disease;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37;

(j) To see that all necessary utilities and services are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(*l*) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To make orders directed to the superintendent of schools for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise. The local school board shall be authorized and empowered to promulgate rules and regulations that specify the types of claims and set limits of the dollar amount for payment of claims by the superintendent of schools to be ratified by the board at the next regularly scheduled meeting after payment has been made;

(p) To select all school district personnel in the manner provided by law, and to provide for such employee fringe benefit programs, including accident reimbursement plans, as may be deemed necessary and appropriate by the board;

(q) To provide athletic programs and other school activities and to regulate the establishment and operation of such programs and activities;

(r) To join, in their discretion, any association of school boards and other public school-related organizations, and to pay from local funds other than minimum foundation funds, any membership dues;

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless commingled in a bank account with existing activity funds, regardless of whether the funds were raised by school employees or received by school employees during school hours or using school facilities, and regardless of whether a school employee exercises influence over the expenditure or disposition of such funds. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperons in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in its discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (i) that such school activity funds shall be maintained and expended by the principal of the school generating the funds in individual bank accounts, or (ii) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide that such school activity funds be audited as part of the annual audit required in Section 37-9-18. The State Department of Education shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions;

(t) To enter into an energy performance contract, energy services contract, a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14;

(u) To maintain accounts and issue pay certificates on school food service bank accounts;

(v)(i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any nonminimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (⅗) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the lease as determined by the averaging of at least two (2) appraisals by certified general appraisers licensed by the State of Mississippi. The term "school building" as used in this paragraph (v)(i) shall be construed to mean any building or buildings used for classroom purposes in connection with the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this paragraph (v)(i) may include a lease-purchase contract;

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school boards having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in each participating school district under the procedure hereinabove set forth in paragraph (v)(i). All of the provisions of paragraph (v)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each;

(w) To employ all noninstructional and noncertificated employees and fix the duties and compensation of such personnel deemed necessary pursuant to the recommendation of the superintendent of schools;

(x) To employ and fix the duties and compensation of such legal counsel as deemed necessary;

(y) Subject to rules and regulations of the State Board of Education, to purchase, own and operate trucks, vans and other motor vehicles, which shall bear the proper identification required by law;

(z) To expend funds for the payment of substitute teachers and to adopt reasonable regulations for the employment and compensation of such substitute teachers;

(aa) To acquire in its own name by purchase all real property which shall be necessary and desirable in connection with the construction, renovation or improvement of any public school building or structure. Whenever the purchase price for such real property is greater than Fifty Thousand Dollars ($50,000.00), the school board shall not purchase the property for an amount exceeding the fair market value of such property as determined by the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi. If the board shall be unable to agree with the owner of any such real property in connection with any such project, the board shall have the power and authority to acquire any such real property by condemnation proceedings pursuant to Section 11-27-1 et seq., Mississippi Code of 1972, and for such purpose, the right of eminent domain is hereby conferred upon and vested in said board. Provided further, that the local school board is authorized to grant an easement for ingress and egress over sixteenth section land or lieu land in exchange for a similar easement upon adjoining land where the exchange of easements affords substantial benefit to the sixteenth section land; provided, however, the exchange must be based upon values as determined by a competent appraiser, with any differential in value to be adjusted by cash payment. Any easement rights granted over sixteenth section land under such authority shall terminate when the easement ceases to be used for its stated purpose. No sixteenth section or lieu land which is subject to an existing lease shall be burdened by any such easement except by consent of the lessee or unless the school district shall acquire the unexpired leasehold interest affected by the easement;

(bb) To charge reasonable fees related to the educational programs of the district, in the manner prescribed in Section 37-7-335;

(cc) Subject to rules and regulations of the State Board of Education, to purchase relocatable classrooms for the use of such school district, in the manner prescribed in Section 37-1-13;

(dd) Enter into contracts or agreements with other school districts, political subdivisions or governmental entities to carry out one or more of the powers or duties of the school board, or to allow more efficient utilization of limited resources for providing services to the public;

(ee) To provide for in-service training for employees of the district;

(ff) As part of their duties to prescribe the use of textbooks, to provide that parents and legal guardians shall be responsible for the textbooks and for the compensation to the school district for any books which are not returned to the proper schools upon the withdrawal of their dependent child. If a textbook is lost or not returned by any student who drops out of the public school district, the parent or legal guardian shall also compensate the school district for the fair market value of the textbooks;

(gg) To conduct fund-raising activities on behalf of the school district that the local school board, in its discretion, deems appropriate or beneficial to the official or extracurricular programs of the district; provided that:

(i) Any proceeds of the fund-raising activities shall be treated as "activity funds" and shall be accounted for as are other activity funds under this section; and

(ii) Fund-raising activities conducted or authorized by the board for the sale of school pictures, the rental of caps and gowns or the sale of graduation invitations for which the school board receives a commission, rebate or fee shall contain a disclosure statement advising that a portion of the proceeds of the sales or rentals shall be contributed to the student activity fund;

(hh) To allow individual lessons for music, art and other curriculum-related activities for academic credit or nonacademic credit during school hours and using school equipment and facilities, subject to uniform rules and regulations adopted by the school board;

(ii) To charge reasonable fees for participating in an extracurricular activity for academic or nonacademic credit for necessary and required equipment such as safety equipment, band instruments and uniforms;

(jj) To conduct or participate in any fund-raising activities on behalf of or in connection with a tax-exempt charitable organization;

(kk) To exercise such powers as may be reasonably necessary to carry out the provisions of this section;

(*ll*) To expend funds for the services of nonprofit arts organizations or other such nonprofit organizations who provide performances or other services for the students of the school district;

(mm) To expend federal No Child Left Behind Act funds, or any other available funds that are expressly designated and authorized for that use, to pay training, educational expenses, salary incentives and salary supplements to employees of local school districts; except that incentives shall not be considered part of the local supplement as defined in Section 37-151-5(o), nor shall incentives be considered part of the local supplement paid to an individual teacher for the purposes of Section 37-19-7(1). Mississippi Adequate Education Program funds or any other state funds may not be used for salary incentives or salary supplements as provided in this paragraph (mm);

(nn) To use any available funds, not appropriated or designated for any other purpose, for reimbursement to the state-licensed employees from both in state and out of state, who enter into a contract for employment in a school district, for the expense of moving when the employment necessitates the relocation of the licensed employee to a different geographical area than that in which the licensed employee resides before entering into the contract. The reimbursement shall not exceed One Thousand Dollars ($1,000.00) for the documented actual expenses incurred in the course of relocating, including the expense of any professional moving company or persons employed to assist with the move, rented moving vehicles or equipment, mileage in the amount authorized for county and municipal employees under Section 25-3-41 if the licensed employee used his personal vehicle or vehicles for the move, meals and such other expenses associated with the relocation. No licensed employee may be reimbursed for moving expenses under this section on more than one (1) occasion by the same school district. Nothing in this section shall be construed to require the actual residence to which the licensed employee relocates to be within the boundaries of the school district that has executed a contract for employment in order for the licensed employee to be eligible for reimbursement for the moving expenses. However, the licensed employee must relocate within the boundaries of the State of Mississippi. Any individual receiving relocation assistance through the Critical Teacher Shortage Act as provided in Section 37-159-5 shall not be eligible to receive additional relocation funds as authorized in this paragraph;

(oo) To use any available funds, not appropriated or designated for any other purpose, to reimburse persons who interview for employment as a licensed employee with the district for the mileage and other actual expenses incurred in the course of travel to and from the interview at the rate authorized for county and municipal employees under Section 25-3-41;

(pp) Consistent with the report of the Task Force to Conduct a Best Financial Management Practices Review, to improve school district management and use of resources and identify cost savings as established in Section 8 of Chapter 610, Laws of 2002, local school boards are encouraged to conduct independent reviews of the management and efficiency of schools and school districts. Such management and efficiency reviews shall provide state and local officials and the public with the following:

(i) An assessment of a school district's governance and organizational structure;

(ii) An assessment of the school district's financial and personnel management;

(iii) An assessment of revenue levels and sources;

(iv) An assessment of facilities utilization, planning and maintenance;

(v) An assessment of food services, transportation and safety/security systems;

(vi) An assessment of instructional and administrative technology;

(vii) A review of the instructional management and the efficiency and effectiveness of existing instructional programs; and

(viii) Recommended methods for increasing efficiency and effectiveness in providing educational services to the public;

(qq) To enter into agreements with other local school boards for the establishment of an educational service agency (ESA) to provide for the cooperative needs of the region in which the school district is located, as provided in Section 37-7-345;

(rr) To implement a financial literacy program for students in Grades 10 and 11. The board may review the national programs and obtain free literature from various nationally recognized programs. After review of the different programs, the board may certify a program that is most appropriate for the school districts' needs. If a district implements a financial literacy program, then any student in Grade 10 or 11 may participate in the program. The financial literacy program shall include, but is not limited to, instruction in the same areas of personal business and finance as required under Section 37-1-3(2)(b). The school board may coordinate with volunteer teachers from local community organizations, including, but not limited to, the following: United States Department of Agriculture Rural Development, United States Department of Housing and Urban Development, Junior Achievement, bankers and other nonprofit organizations. Nothing in this paragraph shall be construed as to require school boards to implement a financial literacy program;

(ss) To collaborate with the State Board of Education, Community Action Agencies or the Department of Human Services to develop and implement a voluntary program to provide services for a prekindergarten program that addresses the cognitive, social, and emotional needs of four-year-old and three-year-old children. The school board may utilize any source of available revenue to fund the voluntary program. Effective with the 2013-2014 school year, to implement voluntary prekindergarten programs under the Early Learning Collaborative Act of 2013 pursuant to state funds awarded by the State Department of Education on a matching basis;

(tt) With respect to any lawful, written obligation of a school district, including, but not limited to, leases (excluding leases of sixteenth section public school trust land), bonds, notes, or other agreement, to agree in writing with the obligee that the Department of Revenue or any state agency, department or commission created under state law may:

(i) Withhold all or any part (as agreed by the school board) of any monies which such local school board is entitled to receive from time to time under any law and which is in the possession of the Department of Revenue, or any state agency, department or commission created under state law; and

(ii) Pay the same over to any financial institution, trustee or other obligee, as directed in writing by the school board, to satisfy all or part of such obligation of the school district.

The school board may make such written agreement to withhold and transfer funds irrevocable for the term of the written obligation and may include in the written agreement any other terms and provisions acceptable to the school board. If the school board files a copy of such written agreement with the Department of Revenue, or any state agency, department or commission created under state law then the Department of Revenue or any state agency, department or commission created under state law shall immediately make the withholdings provided in such agreement from the amounts due the local school board and shall continue to pay the same over to such financial institution, trustee or obligee for the term of the agreement.

This paragraph (tt) shall not grant any extra authority to a school board to issue debt in any amount exceeding statutory limitations on assessed value of taxable property within such school district or the statutory limitations on debt maturities, and shall not grant any extra authority to impose, levy or collect a tax which is not otherwise expressly provided for, and shall not be construed to apply to sixteenth section public school trust land;

(uu) With respect to any matter or transaction that is competitively bid by a school district, to accept from any bidder as a good-faith deposit or bid bond or bid surety, the same type of good-faith deposit or bid bond or bid surety that may be accepted by the state or any other political subdivision on similar competitively bid matters or transactions. This paragraph (uu) shall not be construed to apply to sixteenth section public school trust land. The school board may authorize the investment of any school district funds in the same kind and manner of investments, including pooled investments, as any other political subdivision, including community hospitals;

(vv) To utilize the alternate method for the conveyance or exchange of unused school buildings and/or land, reserving a partial or other undivided interest in the property, as specifically authorized and provided in Section 37-7-485;

(ww) To delegate, privatize or otherwise enter into a contract with private entities for the operation of any and all functions of nonacademic school process, procedures and operations including, but not limited to, cafeteria workers, janitorial services, transportation, professional development, achievement and instructional consulting services materials and products, purchasing cooperatives, insurance, business manager services, auditing and accounting services, school safety/risk prevention, data processing and student records, and other staff services; however, the authority under this paragraph does not apply to the leasing, management or operation of sixteenth section lands. Local school districts, working through their regional education service agency, are encouraged to enter into buying consortia with other member districts for the purposes of more efficient use of state resources as described in Section 37-7-345;

(xx) To partner with entities, organizations and corporations for the purpose of benefiting the school district;

(yy) To borrow funds from the Rural Economic Development Authority for the maintenance of school buildings;

(zz) To fund and operate voluntary early childhood education programs, defined as programs for children less than five (5) years of age on or before September 1, and to use any source of revenue for such early childhood education programs. Such programs shall not conflict with the Early Learning Collaborative Act of 2013;

(aaa) To issue and provide for the use of procurement cards by school board members, superintendents and licensed school personnel consistent with the rules and regulations of the Mississippi Department of Finance and Administration under Section 31-7-9; and

(bbb) To conduct an annual comprehensive evaluation of the superintendent of schools consistent with the assessment components of paragraph (pp) of this section and the assessment benchmarks established by the Mississippi School Board Association to evaluate the success the superintendent has attained in meeting district goals and objectives, the superintendent's leadership skill and whether or not the superintendent has established appropriate standards for performance, is monitoring success and is using data for improvement.

**HISTORY: Codes, 1942, § 6328-24; Laws, 1953, Ex Sess, ch. 28, § 2; Laws, 1970, ch. 373, § 1; Laws, 1971, ch. 340, § 1; Laws, 1982, ch. 466, § 1; Laws, 1985, ch. 466, § 1; Laws, 1985, ch. 493, § 3; Laws, 1986, ch. 415, § 3; Laws, 1986, ch. 433, § 18; Laws, 1986, ch. 492, § 9; Laws, 1987, ch. 307, § 4; Laws, 1989, ch. 585, § 6; Laws, 1990, ch. 535, § 4; Laws, 1993, ch. 549, § 1; Laws, 1993, ch. 562, § 1; Laws, 1995, ch. 515, § 1; Laws, 1995, ch. 344, § 3; Laws, 1995, ch. 426, § 2; Laws, 1996, ch. 437, § 1; Laws, 2000, ch. 370, § 4; Laws, 2000, ch. 559, § 1; Laws, 2004, ch. 408, § 2; Laws, 2004, ch. 485, § 1; Laws, 2004, ch. 563, § 1; Laws, 2005, ch. 394, § 1; Laws, 2005, ch. 540, § 2; Laws, 2006, ch. 390, § 1; Laws, 2006, ch. 417, § 14; Laws, 2007, ch. 416, § 2; Laws, 2009, ch. 317, § 1; reenacted without change, Laws, 2009, ch. 345, § 7; Laws, 2010, ch. 488, § 5; Laws, 2012, ch. 490, § 1; Laws, 2012, ch. 543, § 2; Laws, 2013, ch. 493, § 3; Laws, 2014, ch. 481, § 3, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Section 1 of ch. 317, Laws of 2009, effective from and after July 1, 2009 (approved March 9, 2009), amended this section. Section 7 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 1 of ch. 317, Laws of 2009, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Section 4 of ch. 370, Laws of 2000, effective from and after July 1, 2000 (approved April 14, 2000), amended this section. Section 1 of ch. 559, Laws of 2000, effective from and after July 1, 2000 (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the

June 29, 2005 meeting of the Committee.

Section 2 of ch. 408 Laws of 2004, effective from and after June 30, 2004 (approved April 26, 2004), amended this section. Section 1 of ch. 485, Laws of 2004, effective from and after July 1, 2004 (approved May 1, 2004), and Section 1 of ch. 563, Laws of 2004 effective from and after July 1, 2004 (approved May 14, 2004), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 563, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (qq). "Section 37-7-345" was substituted for "Section 1 of Senate Bill No. 3016, 2004 Regular Session" at the end of the first sentence.

Section 2 of ch. 540 Laws of 2005, effective from and after passage (approved April 20, 2005), amended this section. Section 1 of ch. 394, Laws of 2005, effective July 1, 2005 (approved March 16, 2005), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2005 meeting of the Committee.

Section 1 of ch. 390, Laws of 2006, effective from and after July 1, 2006 (approved March 13, 2006), amended this section. Section 14 of ch. 417, Laws of 2006, effective from and after July 1, 2006 (approved March 15, 2006), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 31, 2006 meeting of the Committee.

Section 2 of ch. 543, Laws of 2012, effective from and after July 1, 2012 (approved May 22, 2012), amended this section. Section 1 of ch. 490, Laws of 2012, effective July 1, 2012 (approved April 26, 2012), amended this section. As set out above, this section reflects the language of Section 2 of ch. 543, Laws of 2012, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date supersedes all other amendments to the same section approved on an earlier date.

**Editor's Notes** — Laws of 1989, ch. 585, § 9, provides as follows:

"SECTION 9. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Laws of 1990, ch. 588, § 7, amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990 declare that sufficient funds were dedicated and made available for the implementation of Chapter 588. However, such funds were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions were not implemented. The text of the amendment can be found in the Advance Sheet Acts of the 1990

Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Laws of 1996, ch. 437, § 2, provides as follows:

"SECTION 2. Any actions taken by school officials prior to the effective date of this act which are specifically authorized herein, are hereby ratified, approved and confirmed."

**Cross References —** Cooperation in carrying out provisions regarding job development and training, see § 7-1-365.

Power of the state department of audit to audit the accounts of any school district, including activity funds, see § 7-7-211.

Public contracts for energy efficiency services, see § 31-7-14.

State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Provisions providing that all public school districts have a common system of administration after July 1, 1987, see § 37-6-1 et seq.

Emergency School Leasing Authority Act of 1986, see §§ 37-7-351 through 37-7-359.

Power of boards of trustees of school districts to require physical examinations of school employees, see § 37-11-17.

School district's discipline plan, and recovery of damages from parent for child's destructive acts against school property, see § 37-11-53.

Code of student conduct, see § 37-11-55.

Inclusion of immunization information in pupils' permanent records, see § 37-15-1.

Establishment of graduation standards, see § 37-16-7.

Authority of State Board of Education as to school districts declared to be in a state of emergency, see § 37-17-13.

Early Learning Collaborative Act of 2013, see § 37-21-51.

Establishment and maintenance of drivers' education courses by school boards, see § 37-25-3.

Letting of contracts and making of purchases by boards of trustees for school equipment and supplies, see § 37-39-1 et seq.

Pledge of monies from Education Enhancement Fund to pay debt service on debt issued under this section, see § 37-61-33.

Conditions for closing schools by boards of trustees, see § 37-65-101 et seq.

Mississippi Adequate Education Program created, see § 37-151-1 et seq.

Mississippi Critical Teacher Shortage Act, see § 37-159-1 et seq.

Prohibition against attendance of school by unvaccinated children, see § 41-23-37.

Application of Energy Management Law to property of public school districts, see § 57-39-103.

Roads, driveways and parking areas on school district property, and expenditure of funds for their construction and upkeep, see § 65-7-74.

**Federal Aspects—** No Child Left Behind Act of 2001, P.L. 107-110, 115 Stat. 1425, see 20 USCS §§ 6301 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Employment.
3. Expenditures.
4. Student rights and discipline.
5. Suit for damages.
6. Miscellaneous.

**1. In general.**

School district's acts of constructing and maintaining a theater set, where an independent contractor fell through a hole in a catwalk above a high school stage, fell under the governmental function. Calonkey v. Amory Sch. Dist., 163 So. 3d 940, 2014 Miss. App. LEXIS 499 (Miss. Ct. App. 2014), cert. denied, 163 So. 3d 301, 2015 Miss. LEXIS 238 (Miss. 2015).

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under Miss. Code Ann. §§ 37-45-21, 37-47-1 et seq., 37-57-1, 37-59-3, and 37-151-7 were equally divided between local school districts and the state under Miss. Code Ann. §§ 11-46-7, 11-46-16(2), and § 11-46-17(2), any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity. Black v. N. Panola Sch. Dist., 461 F.3d 584, 2006 U.S. App. LEXIS 21259 (5th Cir. Miss. 2006).

In the construction and erection of elementary and junior high schools and the preparation of school grounds, trustees of the city municipal separate school district were exercising power conferred upon them by the Constitution and the legislature, and were not agents of the city. Harrell v. Jackson, 229 Miss. 815, 92 So. 2d 240, 1957 Miss. LEXIS 329 (Miss. 1957).

**2. Employment.**

A school board has the authority to employ and fix the duties and compensation of non-instructional personnel. Yarbrough v. Camphor, 645 So. 2d 867, 1994 Miss. LEXIS 450 (Miss. 1994).

Where the minutes showed that the board of trustees of a school district at a meeting for the purpose of choosing teachers for the following school term selected petitioner, along with others, as teachers, and that the board would require teachers without degrees to take summer work towards them, but did not indicate that this provision was a condition precedent or subsequent to the employment contract of the teachers so elected, failure of petitioner to attend summer school did not automatically invalidate her contract, and the board of trustees could only remove her under the provisions of § 26, chapter 20, Laws of 1953, extraordinary session [Miss. Code Ann. § 37-9-59]. Cheatham v. Smith, 229 Miss. 803, 92 So. 2d 203, 1957 Miss. LEXIS 328 (Miss. 1957).

**3. Expenditures.**

A school board's posting of a performance bond for the benefit of a private construction company in connection with its job training program was an illegal expenditure; by posting a performance bond as guarantor for a private company, the school board far exceeded its statutory authority to conduct vocational education training, and therefore personal liability for the illegal expenditure would be imposed on board members. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

A school board's expenditures of $21,548.92 to pay campaign workers to promote passage of a bond referendum for new school buildings and $945.03 for lunch for poll workers on election day constituted illegal expenditures since a school district is without explicit or implicit statutory authority to expend taxpayer funds in a promotional effort for the passage of a bond referendum; neither §§ 37-59-1 et seq., which are devoted to school bonds and obligations, nor subsection (d) of this section, which empowers local school districts to construct schools, authorize a school board to spend public funds to promote passage of a bond issue, and therefore board members who voted affirmatively for the advertising budget from which the expenditures were made would be personally liable for the illegal expenditures. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

**4. Student rights and discipline.**

Where disciplinary proceedings were commenced against a student for violating his school's policy that prohibited students from carrying weapons, the school board did not err in delegating authority to the superintendent to determine whether the object was a knife under school policy and state law. Miss. Code Ann. § 37-7-301(e) authorized the school board to delegate authority to the superintendent to make a determination as to whether the seized instrument was a weapon, so long as the school board made the final determination regarding discipline. Hinds County Sch. Dist. Bd. v. R.B., 10 So. 3d 387, 2008 Miss. LEXIS 606 (Miss. 2008).

School district's alcohol policy was not facially overbroad as applied to conduct of student who admitted consuming alcohol before entering school property to attend school athletic function; policy validly applied to student's conduct, district was constitutionally permitted to proscribe consumption of alcohol within limits, and policy was susceptible to narrowing interpretation. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

High school principal's deletion from school-sponsored student newspaper of pages containing articles he reasonably considered objectionable did not violate student's First Amendment rights. Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592, 1988 U.S. LEXIS 310 (U.S. 1988).

A denial of a list of witnesses does not always amount to a prejudicial denial of due process, particularly where student witnesses in a school disciplinary proceeding are involved, since a school board has not been given the power of subpoena. However, school boards should be especially sensitive to the right of students to know the complete nature of the charges, especially where charges of misconduct are denied and proof is based solely on testimony of other students. Although confrontation may not be an absolute necessity – or even advisable – in every case, written statements should ordinarily be provided. Findings of fact should be made, especially where there are multiple allegations. School boards should take note that although courts should not become involved in running schools, expulsion and suspension are severe sanctions requiring solemn attention to a pupil's rights. Jones v. Board of Trustees, 524 So. 2d 968, 1988 Miss. LEXIS 189 (Miss. 1988).

A high school sophomore who, along with a schoolmate, drank 2 or 3 sips of beer at her home before leaving for school, was denied procedural due process when, despite there being no school board rule prohibiting the drinking of beer by students at home, the school board took away all her school credits for the semester as punishment for drinking the beer, and, again, where procedures for a de novo hearing before the school board were ignored. Warren County Bd. of Education v. Wilkinson, 500 So. 2d 455, 1986 Miss. LEXIS 2789 (Miss. 1986).

As matter of state substantive due process, school board's disciplinary rule or scheme is constitutionally enforceable where, fairly viewed, it furthers substantial legitimate interest of school district; authority vested in school boards consistent with constitutional limitation includes substantial discretion with respect to administration of punishment to student who violates school rule. Clinton Municipal Separate School Dist. v. Byrd, 477 So. 2d 237, 1985 Miss. LEXIS 2204 (Miss. 1985).

A rule promulgated by a school principal, pursuant to authority delegated to the principal by the board of trustees to decide whether "a student's hair is too long," that male students should not wear their hair longer than two inches above the eyebrows, had a rational basis to prevent disruption of the atmosphere of learning and was not an improper invasion of family privacy. Shows v. Freeman, 230 So. 2d 63, 1969 Miss. LEXIS 1262 (Miss. 1969).

**5. Suit for damages.**

School district was not entitled to discretionary immunity from liability for injuries caused by a protruding conduit in the district's parking lot because Miss. Code Ann. § 37-7-301(d) imposed a ministerial duty on the district to repair the hazard. Natchez-Adams Sch. Dist. v. Bruce, 168 So. 3d 1181, 2015 Miss. App. LEXIS 231 (Miss. Ct. App.), cert. denied, 166 So. 3d 38, 2015 Miss. LEXIS 334 (Miss. 2015).

School district was not entitled to summary judgment finding the district immune from liability for a student's injury, under Miss. Code Ann. § 11-46-9(1)(d), because the district had a ministerial duty under Miss. Code Ann. § 37-7-301(d) to ensure a divider which fell and struck the student was properly replaced and secured. K.N. v. Moss Point Sch. Dist., 167 So. 3d 1280, 2014 Miss. App. LEXIS 659 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 359 (Miss. 2015).

A school district was expressly and impliedly, both by statute and case law, authorized to file and pursue a claim for damages resulting from the alleged faulty construction of a school building against the contractor, the architect, the bonding company, the subcontractors, and the furnishers of building materials, under § 11-45-11, since the district had responsibility for the erection, repairing and equipping of school facilities pursuant to § 37-7-619 [repealed], and since § 7-5-1 did not require that the action be brought by the Attorney General, in that the subject matter of the allegations was an isolated contract and its alleged breach resulting in a defective school roof, which was hardly a matter of state-wide interest. Grenada Municipal Separate School Dist. v. Jesco, Inc., 449 So. 2d 226, 1984 Miss. LEXIS 1707 (Miss. 1984).

A municipal separate school district may bring suit for alleged damages resulting from the alleged faulty construction of a district's school building against the contractor, the architect, the bonding company, the sub-contractors, and the furnishers of building materials. Grenada Municipal Separate School Dist. v. Jesco, Inc., 449 So. 2d 226, 1984 Miss. LEXIS 1707 (Miss. 1984).

**6. Miscellaneous.**

Because a decedent was not invited to use a school district bus parking lot, he was a trespasser, and when he left the lot to attempt to cross a public road, he relinquished that status. Thus, the district owed the decedent no duty under Miss. Code Ann. §§ 37-9-69 and 37-7-301 when he stepped off district property and was struck by an oncoming motorist while crossing the road. Gammel v. Tate County Sch. Dist., 995 So. 2d 853, 2008 Miss. App. LEXIS 691 (Miss. Ct. App. 2008).

Youth court had jurisdiction to order reenrollment of student suspended for violation of school district's alcohol policy. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

A public school board had the authority to consolidate schools within its district and to reassign students en masse; the plan was not a "reorganization of the school district" within the meaning of § 37-7-105. Section 37-7-105 and its petition, publication and referendum procedures do not apply to everything the school board may wish to abolish, alter or reorganize. The statute applies only where the school board "abolishes, alters or reorganizes a school district." The phrase "school district" imports the geographic boundaries of the district and perhaps the corporate organization or structure thereof. The school board's plan did not alter the existing structure of the school district, which remained a county-wide district, and did not reorganize corporate structure, and therefore §§ 37-7-103 and 37-7-105 did not apply. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

Notice procedure set forth in Leasing Act [Miss. Code Ann. § 37-7-301] is constitutionally adequate, since it is reasonably calculated, under all circumstances, to apprise interested parties of pendency of action and afford them opportunity to present objections. Cox v. Jackson Municipal Separate School Dist., 503 So. 2d 265, 1987 Miss. LEXIS 2355 (Miss. 1987).

## OPINIONS OF THE ATTORNEY GENERAL

School board is not authorized to enter into an owner financed purchase agreement for the purchase of land. Bailey, Jan. 7, 1992, A.G. Op. #91-0959.

School board attorney may be compensated for all legal services contracted for and performed including legal services in conjunction with bond issues, subject to statutory fee limitations. King, August 5, 1992, A.G. Op. #92-0553.

Local public school districts have necessary implied authority to purchase contracts for liability insurance if they determine such is in best interest of districts. Watkins, Sept. 10, 1992, A.G. Op. #92-0731.

School board could not purchase utility vehicle to be operated by employee of State Forestry Commission in performance of forestry services for school district. Badon, Oct. 14, 1992, A.G. Op. #92-0788.

School board may, pursuant to this section, set reasonable regulations for governance of schools including permitting of solicitation, as in case of various music supply companies presenting their products to new band members; this solicitation must be in connection with school-sponsored program, and parents or children who so request should be allowed to view products of any business which provides product, if only that business is given access to school; to permit solicitation by businesses for products unrelated to school-sponsored course or event may be violation of Constitution and may impair efficient operation of school. Young, Feb. 3, 1993, A.G. Op. #93-0070.

Statute allows school district to employ counsel as it deems necessary to represent it in any action at law; however, it does not authorize payment of fees for attorney employed by and representing private group in action to which district is not party; such would be violation of Article 4, Section 66 of Mississippi Constitution of 1890 Andrews Oct. 29, 1993, A.G. Op. #93-0777.

In regard to personnel matters, Sections 37-9-3, 37-7-301(w), 37-9-15, 37-9-17, 37-9-105 and 37-9-59, with the exception of the step-aside provisions of 37-9-17, require the recommendation of the superintendent before the board may act upon the employment of non-instructional employees and certificated employees. Hand, February 1, 1995, A.G. Op. #95-0008.

Travel expenses of school board members are governed by subsection (o) of this section and § 37-6-13 and a school board may approve travel expenses of their membership without the superintendent's recommendation. Hand, February 1, 1995, A.G. Op. #95-0008.

Travel expenses of non-school board personnel requires the approval of the school board pursuant to Section 37-9-14(7) and subsection (o) of this section. Hand, February 1, 1995, A.G. Op. #95-0008.

Subsection (w) of this section authorizes the school board to employ registered lobbyists to represent the board's interest before the Mississippi Legislature and its committees if the superintendent or administrative superintendent recommends it, and the school board finds that such action is necessary to the carrying out of a lawful school board function. Barrett, July 27, 1995, A.G. Op. #95-0493.

Subsection (dd) of this section for school districts and Section 21-17-5, the home rule authority for municipalities, provide specific authority for the school district and the city to enter into the Interlocal Agreement for the provision of printing services by the school district to the city, provided adequate consideration is received in return. Cochran, December 20, 1995, A.G. Op. #95-0730.

Subsection (aa) of this section includes the power to lease property such as a parking lot for use by an existing school building upon the requisite findings that the property is necessary and desirable in connection with the operation of the school building. Caves, November 1, 1996, A.G. Op. #96-0709.

A county board of supervisors does not have the power to lease real property from a school district for the purpose of subsequently subleasing the property to citizens of the county to be used as a community recreational facility. Lamar, July 18, 1997, A.G. Op. #97-0429.

A public school district is authorized to enter into a contract for Medicaid reimbursement billing services, and such contract may provide for compensation at a rate determined by the district board to be reasonable and commensurate with the services provided. Turner, July 25, 1997, A.G. Op. #97-0430.

A school board may contract with an investment advisor to provide services and pay a fixed, percentage fee based upon the assets managed by the advisor so long as the board finds that the fee is reasonable and commensurate with the services provided. Turner, August 28, 1998, A.G. Op. #98-0475.

A school district and a city may enter into an interlocal agreement for the provision of traffic control, although the duty to enforce traffic regulations lies with the police department and it can not withhold its services solely because of the lack of such an agreement. Noble, January 15, 1999, A.G. Op. #98-0714.

A school district is authorized to purchase property or exercise the right of eminent domain. Bryant, January 15, 1999, A.G. Op. #98-0725.

If property is subject to a present lease with the term expiring in the future, the school district may acquire the property subject to the lease. Bryant, January 15, 1999, A.G. Op. #98-0725.

Assuming that a drug testing program meets the constitutional standards established in Vernonia School Dist. 47J v. Acton, 115 S. Ct. 2386 (1995), and there are factual findings on the board minutes in accord with these standards, then the school board has the authority to pay for the cost of such a program out of maintenance funds. Wallace, January 29, 1999, A.G. Op. #98-0803.

If a mandatory school uniform rule furthers a substantial, legitimate interest of the school district, as determined by the school board, then it is within the discretion of a school board, with proper notice, to prescribe the discipline to be administered for the violation of the rule or regulation; assuming that the child is financially able to purchase the required uniform, a school district may administer, subject to procedural due process, appropriate disciplinary measures for refusal to comply with the school rule, including suspension or expulsion; however, long term out-of-school suspension or expulsion for violation of a school uniform policy is not permitted. Smith, June 11, 1999, A.G. Op. #99-0274.

At athletic and student recognition banquets, meals may be provided by the school board for students, parents, and employees of the district. Bryant, July 30, 1999, A.G. Op. #99-0380.

Both the GECIC and the GCCF are organizations to which a school board may pay dues, and once dues are paid into a private organization, the funds are no longer public funds and are no longer restricted by the laws governing state agencies' investments and expenditures. Dukes, August 20, 1999, A.G. Op. #99-0397.

A school board may, with proper notice, adopt a rule wherein further property belonging to the school may be withheld from a student who has lost, destroyed, or damaged school property entrusted to him or her until such time as the student or parents reimburse the school for the property. Chaney, Jr., Jan. 28, 2000, A.G. Op. #99-0723.

Subsection (s) discusses two separate issues related to activity funds; the first issue is the "necessary expenses or travel costs . . . incurred by students and their chaperons," and the second issue is "any commodities, equipment . . . which may become the personal property of individuals." Bryant, May 19, 2000, A.G. Op. #2000-0186.

The term "individuals," as used in subsection (s), refers to the students of the local school district. Bryant, May 19, 2000, A.G. Op. #2000-0186.

Subsection (aa) allows a school board to acquire real property, so long as no amount is paid for interest or financing of the purchase. Mitchell, June 9, 2000, A.G. Op. #2000-0266.

Organizations may be permitted to utilize school facilities without charge for rent or utilities, as long as the school board makes a finding that the organization's use of the property is beneficial to the official or extracurricular programs of the school. Compretta, July 28, 2000, A.G. Op. #2000-0425.

A school board is authorized to expend funds for the purpose of renovating and adding on to the office of the superintendent of education if such is reasonably necessary for the performance of duties. Gex, Oct. 6, 2000, A.G. Op. #2000-0555.

The school board of a county school district does not have authority to employ or re-employ a non-instructional employee if the superintendent does not recommend the employee to the board. Boyles, Mar. 2, 2001, A.G. Op. #01-0116.

A school board can adopt a policy which addresses non-employees, as long as the policy is consistent with all laws and State Board of Education regulations, and a school district may, in the exercise of its authority to provide a safe and secure environment for its students, prohibit or otherwise restrict a convicted felon from working with students on campus. Tutor, Mar. 20, 2001, A.G. Op. #01-0688.

A school district may contract with noninstructional and noncertified employees in accordance with the fluctuating workweek scheme as defined by the federal Fair Labor Standards Act. Adams, Sept. 28, 2001, A.G. Op. #01-0601.

A school board may set the salary for any superintendent, principal, or licensed/certificated employee at the amount the board deems appropriate. Mayfield, July 19, 2002, A.G. Op. #02-0291.

Allowing independent contractors to establish concession areas on school property during extracurricular events constitutes the granting of a license for which it would require the approval of the school board and the assessment of a reasonable fee, which could be in the form of a negotiated percentage of all sales of food and beverages at the events. Adams, Sept. 27, 2002, A.G. Op. #02-0508.

Even if there was an error in crediting experience at the time a school district hired an employee, the district and the employee agreed upon an amount for salary and the employee was paid that salary and is not due any back pay. Logan, Nov. 8, 2002, A.G. Op. #02-0617.

The school board must be allowed to reject or approve all claims before pay certificates are issued by the superintendent of education; however, pay certificates may be issued by the superintendent without prior approval of the school board on the payment of specific claims in accordance with the exceptions set out in subsection 37-9-14(7). Henderson, Dec. 6, 2002, A.G. Op. #02-0658.

Where a school district and long-term substitute teacher agreed upon a specific daily amount of compensation and she was paid that amount, even if this was an error in that other employees serving in the same position received a higher daily pay rate, she was not due any back pay under the circumstances. Varas, Dec. 13, 2002, A.G. Op. #02-0706.

So long as a school district's employees are not already contracted and paid to participate in training sessions and have not performed the service of attending the sessions, Article 4, Section 96 of the Mississippi Constitution does not prohibit the district from contracting with these employees to attend the sessions. Adams, Jan. 10, 2003, A.G. Op. #02-0717.

If a graduation policy furthers a substantial, legitimate interest of the school district, as determined by the school board, then it is within the authority of the school board to adopt such graduation policy. Adams, June 13, 2003, A.G. Op. 03-0257.

Considering the absence of any state law to the contrary, a school board has the inherent authority to establish its own policy regarding the setting and amending of its agenda as well as the adoption of rules of parliamentary procedure pursuant to its authority under this section. Adams, June 20, 2003, A.G. Op. 03-0282.

A school board is authorized to pay for additions to the superintendent's office building which is owned by the county if the county approves the modifications to and construction upon its property. Spears, July 18, 2003, A.G. Op. 03-0319.

Whether a meeting of the Congressional Black Caucus Political and Educational Leadership Institute is educational is a factual question which cannot be answered by way of an Attorney General's opinion; however, if the school board makes a determination, consistent with fact and subject to review by the State Auditor or a court of competent jurisdiction, that it is an educational meeting then it may approve the expenditure of funds for the attendance of members, as long as the requirements of Section 37-6-13 and subsection (o) of this section have been met. Swanson, July 7, 2003, A.G. Op. 03-0330.

No statutory authority can be found which would permit school employees to search a student vehicle that is parked on a city street, to designate parking on a city street or to control traffic flow of a city street; however, a school district and a city may enter into an interlocal agreement for the provision of traffic control, and city and county law enforcement agencies are authorized to contract with school districts for the provision of police protection. Taylor, July 7, 2003, A.G. Op. 03-0334.

Although school districts are empowered to construct school buildings and related facilities and to construct necessary utility services, no authority can be found for a district to provide services to a private entity. Harrell, Jan. 6, 2004, A.G. Op. 03-0628.

Use of public school buildings pursuant to subsection (k) of this section should not interfere with the school's routine or extra-curricular use of the building. Adams, Jan. 30, 2004, A.G. Op. 03-0704.

A school district may require compensation for use of a school facility. Adams, Jan. 30, 2004, A.G. Op. 03-0704.

While a school has the authority to impose disciplinary punishment against a student who damages school property (or to seek reimbursement from the student's parents), a school should not act in a manner that imposes an academic punishment on the student. Adams, Jan. 23, 2004, A.G. Op. 03-0553.

Subject to any lawfully adopted policies or preexisting contractual obligations, a school board in its discretion may reassign a nonlicensed employee to a position with lesser duties and responsibilities and may also reduce the salary of the employee. Smith, Mar. 19, 2004, A.G. Op. 04-0114.

A school district building use policy must be applied equally to all parties requesting use of the school gymnasium or any other school building; to do otherwise, may have a discriminatory effect on other individuals or groups desiring to use school facilities. Thus, the Parent Teacher Association must abide by the district policy including the provision that requires insurance to be obtained. Jones, Apr. 30, 2004, A.G. Op. 04-0167.

Dues payments by public school districts to associations such as the Mississippi School Superintendents Association, or Mississippi School Board Associations may be paid from local funds. Chaney, June 14, 2004, A.G. Op. 04-0228.

Subsection (gg) of this section authorizes a school board to receive a commission, rebate or fee from a school photographer pursuant to a contract with a photographer for the sale of school pictures as long as a disclosure statement advising that a portion of the proceeds of the sales shall be contributed to the student activity fund is given to students and their parents. Johnson, June 18, 2004, A.G. Op. 04-0236.

There is no specific statutory authority for a school board to dismiss non-licensed employees on its own initiative. That authority has been granted specifically to the superintendent in § 37-9-14 (2)(y). Rhodes, Nov. 4, 2004, A.G. Op. 04-0509.

The purchase of fixtures and equipment constituting fixtures as part of the acquisition of a tract of land and existing truck terminal building shop for use as a school district's bus terminal can be acquired pursuant to subsection (aa) of this section without regard to general bid procedures. Nettles, Nov. 15, 2004, A.G. Op. 04-0490.

A leadership book for teacher use and cell phone service for use by coaches and/or teachers when traveling on school functions may be paid with activity funds if the school board deems the expenses beneficial to the official or extracurricular programs of the district. No authority can be found for expenditure of activity funds for membership dues for a principal to belong to a school-related organization. Compton, July 22, 2005, A.G. Op. 05-0283.

A county school district board has the authority to accept a donation of funds from a non-profit organization for the purpose of constructing an indoor batting facility. Foster, July 29, 2005, A.G. Op. 05-0373.

No statutory provisions are known, other than the conflict of interest laws, that would prevent a school board from purchasing real property from the regular school board attorney, as long as the purchase is made in accordance with Section 37-7-301. Johnson, Oct. 7, 2005, A.G. Op. 05-0473.

A school board may require a Health Certificate to be obtained by all new employees as a condition to employment. Mayfield, Dec. 9, 2005, A.G. Op. 05-0572.

A school board would have the authority to pay for the cost of a portrait to be placed at a high school and the cost of having a mural painted on a wall at the school to honor former students upon making a finding that the expenditures are reasonable and necessary and for the support and operation of its schools and the educational benefit of its students and funds are available. Compton, Apr. 28, 2006, A.G. Op. 06-0144.

There is no authority which grants special privileges to a school district employee who also serves as a public official. Mayfield, Apr. 28, 2006, A.G. Op. 06-0121.

A school board has authority to lease property from the U.S. Army Corps of Engineers; this response does not change for leasing unimproved real property. Walker, July 11, 2006, A.G. Op. 06-0226.

For purposes of application of the separation of powers doctrine, a local school board is an officer exercising powers in the executive branch of government. Bounds, July 27, 2006, A.G. Op. 06-0276.

A school district has the authority to have a student tested for suspicion of using drugs without first securing the parent's or guardian's permission. Montgomery, Aug. 20, 2006, A.G. Op. 06-0513.

Each school district in adopting board regulations pertaining to the use of school facilities for the purpose of conducting public meetings must take into consideration federal constitutional standards as well as current federal statutes. Roach, Aug. 25, 2006, A.G. Op. 06-0362.

A school board may adopt a policy prohibiting the use of the name of the school district for student functions located off campus where all students are not invited. Roach, Aug. 25, 2006, A.G. Op. 06-0362.

The school board has authority to impose disciplinary action for conduct committed at a school-related activity or event or for conduct occurring on property other than school property or at a school-related event. Roach, Aug. 25, 2006, A.G. Op. 06-0362.

A local school board is authorized to acquire, in its own name by purchase, real property consisting of a building located thereon to be used for administrative purposes by the superintendent and central office staff as well as providing additional meeting rooms for school board meetings, provided the requirements of Section 37-7-301(aa) are met. Maples, Sept. 29, 2006, A.G. Op. 06-0469.

A school board has authority to authorize the payment of Hepatitis B vaccines for all school district employees who may be exposed to blood borne pathogens. Smith, Oct. 20, 2006, A.G. Op. 06-0522.

Lease of school facilities to a church for worship services by the Board of Trustees is permissible under Miss. Code Ann. § 37-7-301, so long as the use is allowed under a reasonable and nondiscriminatory policy prescribed by the Board and applied in a reasonable and nondiscriminatory manner, and so long as the church complies with the Board's Building Use Policy. Henderson, February 2, 2007, A.G. Op. #07-00017, 2007 Miss. AG LEXIS 7.

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

Purchase of athletic equipment and travel expenses of students and chaperones for school-related extracurricular clubs and teams are allowable expenditures of activity funds derived from athletic events. If the local school board deems the expenses beneficial to the extracurricular programs and students of the district, it may authorize the expenditures pursuant to Miss. Code Ann. § 37-7-301(s). Caudill, March 30, 2007, A.G. Op. #07-00122, 2007 Miss. AG LEXIS 76.

## RESEARCH REFERENCES

**ALR.**

Use of public school premises for religious purposes during nonschool time. 79 A.L.R.2d 1148.

Physical or mental illness as basis of dismissal of students from school, college, or university. 17 A.L.R.4th 519.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 A.L.R.4th 344.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Validity of regulation by public-school authorities as to clothes or personal appearance of pupils. 58 A.L.R.5th 1.

Validity and construction of public school regulation of student distribution of religious documents at school. 136 A.L.R. Fed. 551.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 25 et seq.

16A Am. Jur. Legal Forms 2d (Rev), Schools § 229:77 (resolution adopting policies, rules and regulations for district).

**CJS.**

78 C.J.S., Schools and School Districts §§ 287-289, 291, 292 et seq.

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## § 37-7-301.1. Local school districts granted home rule.

The school board of a school district may adopt any orders, resolutions or ordinances with respect to school district affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi. Except as otherwise provided in this section, the powers granted to the school boards in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize a school board to: (a) levy taxes of any kind or increase the levy of any authorized tax; (b) issue bonds of any kind; or (c) enter into collective bargaining agreements.

**HISTORY: Laws, 2006, ch. 417, § 1; Laws, 2006, ch. 504, § 5; reenacted without change, Laws, 2009, ch. 345, § 8, eff from and after June 30, 2009.**

**Editor's Notes —** Laws of 2006, ch. 417, § 1, effective from and after July 1, 2006 (approved March 15, 2006), contained identical language to this section and also was directed to be codified as Section 37-7-301.1. The version contained in Laws of 2006, ch. 504, effective from and after July 1, 2006 (approved March 28, 2006), is printed here because it is the latest expression of legislative intent, as determined by the Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Laws of 2006, ch. 504, § 1(1), codified as § 37-161-1(1), provides as follows:

"SECTION 1. (1) This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Cross References —** Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

## § 37-7-302. Borrowing of funds for removal of asbestos.

The board of trustees of any school district shall be authorized to borrow such funds as may be reasonable and necessary from the federal government, the State of Mississippi or any political subdivision or entity thereof, or any other governmental agency, from any individual, partnership, nonprofit corporation or private for-profit corporation, to aid such school districts in asbestos removal, to be repaid out of any non-minimum program funds; provided, however, that the grant of authority shall in no way be construed to require said boards of trustees to remove asbestos material or substances from any facilities under their control, nor shall there be any liability to said school districts or boards for the failure to so remove such asbestos materials. All indebtedness incurred under the provisions of this section shall be evidenced by the negotiable notes or certificates of indebtedness of the school district on whose behalf the money is borrowed. Said notes or certificates of indebtedness of the school district on whose behalf the money is borrowed shall be signed by the president of the school board and superintendent of schools of such school district. Such notes or certificates of indebtedness shall not bear a greater overall maximum interest rate to maturity than the rates now or hereafter authorized under the provisions of Section 19-9-19. No such notes or certificates of indebtedness shall be issued and sold for less than par and accrued interest. All notes or certificates of indebtedness shall mature in approximately equal installments of principal and interest over a period not to exceed twenty (20) years from the dates of the issuance thereof. Principal and interest shall be payable in such manner as may be determined by the school board. Such notes or certificates of indebtedness shall be issued in such form and in such denominations as may be determined by the school board and same may be made payable at the office of any bank or trust company selected by the school board and, in such case, funds for the payment of principal and interest due thereon shall be provided in the same manner provided by law for the payment of the principal and interest due on bonds issued by the taxing districts of this state.

**HISTORY: Laws, 1989, ch. 585, § 7, effective April 25, 1989 (became law without the Governor's signature).**

**Editor's Notes** — Laws of 1989, ch. 585, § 9, provides as follows:

"SECTION 9. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

**Cross References** — Pledge of monies from Education Enhancement Fund to pay debt service on debt issued under this section, see § 37-61-33.

Accreditation and certification of persons involved in identifying, evaluating and abating the hazard of asbestos-containing material in public and private elementary and secondary school buildings, see § 37-138-1 et seq.

## § 37-7-303. Obtaining of insurance on school property; workers' compensation insurance.

(1) The school board of any school district may insure motor vehicles for any hazard that the board may choose, and shall insure the school buildings,

equipment and other school property of the district against any and all hazards that the board may deem necessary to provide insurance against. In addition, the local school board of any school district shall purchase and maintain business property insurance and business personal property insurance on all school district-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to those buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The school district is authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The school district is authorized to enter into agreements with the Department of Finance and Administration, other local school districts, community/junior college districts, state institutions of higher learning, community hospitals and/or other state agencies to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration. Such school board shall be authorized to contract for such insurance for a term of not exceeding five (5) years and to obligate the district for the payment of the premiums thereon. When necessary, the school board is authorized and empowered, in its discretion, to borrow money payable in annual installments for a period of not exceeding five (5) years at a rate of interest not exceeding eight percent (8%) per annum to provide funds to pay such insurance premiums. The money so borrowed and the interest thereon shall be payable from any school funds of the district other than minimum education program funds. The school boards of school districts are further authorized and empowered, in all cases where same may be necessary, to bring and maintain suits and other actions in any court of competent jurisdiction for the purpose of collecting the proceeds of insurance policies issued upon the property of such school district.

(2) Two (2) or more school districts, together with other educational entities or agencies, may agree to pool their liabilities to participate in a group workers' compensation program. The governing authorities of any school board or other educational entity or agency may authorize the organization and operation of, or the participation in such a group self-insurance program with other school boards and educational entities or agencies, subject to the requirements of Section 71-3-5. The Workers' Compensation Commission shall approve such group self-insurance programs subject to uniform rules and regulations as may be adopted by the commission applicable to all groups.

**HISTORY: Codes, 1942, § 6328-26; Laws, 1953, Ex Sess, ch. 17, § 6; Laws, 1960, ch. 370; Laws, 1986, ch. 492, § 10; Laws, 1993, ch. 562, § 2; Laws, 2005, 5th Ex Sess, ch. 24, § 4, eff from and after passage (approved Oct. 24, 2005).**

**Cross References —** Placing of insurance on county property by county board of supervisors, see § 19-7-7.

Liability insurance to cover official actions of public school boards of education, see

§ 37-7-319.

Giving of rewards in cases of destruction of state-supported school buildings, see § 83-1-35.

### OPINIONS OF THE ATTORNEY GENERAL

Individual school district acting alone which desires to participate in liability pool is not required to advertise for bids; liability coverage provided by Mississippi Public Entity Workers' Compensation pool is not subject to provisions of 37-7-303(2). Wallace, Oct. 2, 1992, A.G. Op. #92-0749.

A school district has the authority to participate in the Mississippi Municipal Workers' Compensation Group, a liability pool created for participation by various political subdivisions, as long as it was created pursuant to Section 71-3-5. Seal, Aug. 29, 2003, A.G. Op. 03-0415.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 99.

## § 37-7-304. Repealed.

Repealed by its own terms by Laws, 1992, ch. 491 § 15, eff from and after October 1, 1993.

[Laws, 1973, ch. 477, § 1; Repealed, Laws, 1984, ch. 495, § 36, and Laws, 1984, 1st Ex Sess, ch. 8, § 3; Laws, 1985, ch. 474, § 41; Laws, 1986, ch. 438, § 13; Laws, 1986, ch. 492, § 11; Laws, 1987, ch. 483, § 18; Laws, 1988, ch. 442, § 15; Laws, 1989, ch. 537, § 14; Laws, 1990, ch. 518, § 15; Laws, 1991, ch. 618, § 14; Laws, 1992, ch. 491 § 15]

**Editor's Notes** — Former § 37-7-304 related to obtaining of liability insurance on vehicles.

## § 37-7-305. Leasing of lands for minerals.

The school board of any school district is hereby authorized and empowered, in its discretion, to lease lands owned by the school district, or any land the title to which is in the school board of the district in their trust capacity, for oil, gas and mineral exploration and development upon such terms and conditions and for such considerations as the school board, in its discretion, shall deem proper and advisable. However, no oil, gas or mineral lease shall be for a primary term of more than ten (10) years and said lease or leases shall provide for annual rentals of not less than One Dollar ($1.00) per acre and shall provide for royalties of not less than three-sixteenths ($3/1_6$ths) of all oil, gas and other minerals produced, including sulphur. Every such lease so executed shall empower the lessee to enter upon the premises leased and to explore and develop such premises for oil or gas, or either, or for such other minerals as may be included in the terms of said lease, and to do all things necessary or expedient for the production or preservation of any such products. All rentals, royalties or other revenue payable under any lease executed under the provisions of this section shall be paid to and collected by the school board of the school district and shall be deposited in the school district fund and used and expended in the same manner and subject to the same restrictions as provided by law in the case of other money on deposit in such fund. All leases executed pursuant to this section shall inure to the benefit of the lessee named therein and his heirs or assigns and in case the lessee be a corporation, to such lessee and its assigns. Said leases shall specifically provide that no damages shall be permitted to existing school buildings or facilities thereto.

**HISTORY: Codes, 1942, § 6328-27; Laws, 1953, Ex Sess, ch. 17, § 7; Laws, 1986, ch. 492, § 12, eff from and after July 1, 1987.**

**Cross References —** Oil, gas and mineral leases of lands belonging to agricultural high schools, see § 37-27-29.

Oil, gas and mineral leases of land belonging to junior colleges, see § 37-29-73.

Agreements for co-operative development and operation of certain common accumulations of oil and gas under leases by public officers, see § 53-3-51.

## OPINIONS OF THE ATTORNEY GENERAL

This section controlled with regard to a lease of oil, gas and mineral rights in nonsixteenth section lands owned by a school district; however, the school board was charged with securing fair market value in the bonus paid and rental charged for the lease in order to avoid a donation of state lands in violation of Article 4, Section 95, Mississippi Constitution of 1890. Caves, March 12, 1999, A.G. Op. #99-0110.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 110 et seq.

**CJS.**

78A C.J.S., Schools and School Districts §§ 761, 763.

## § 37-7-306. Training and education requirements.

(1) Every school board member selected after July 1, 2002, shall have a high school diploma or its equivalent.

(2) Every school board member selected after July 1, 1993, shall be required to complete a basic course of training and education for local school board members, in order for board members to carry out their duties more effectively and be exposed to new ideas involving school restructuring. Such basic course of training shall be conducted by the Mississippi School Boards Association. Upon completion of the basic course of training, the Mississippi School Boards Association shall file a certificate of completion for the school board member with the office of the local school board. In the event that a board member fails to complete such training within six (6) months of his selection, such board member shall no longer be qualified to serve and shall be removed from office.

(3) In addition to meeting the requirements of subsection (2) of this

section, after taking office, each school board member shall be required to file annually in the office of the school board a certificate of completion of a course of continuing education conducted by the Mississippi School Boards Association. In addition, those board members required to attend the additional training as provided in Section 37-3-4(5)(c) shall be required to comply with the annual certification provided herein for such additional training.

(4) Every school board member selected after July 1, 2002, shall spend at least one (1) full day in a school in the district they represent, without compensation.

(5) Upon the failure of any local school board member to file with the school board the certificate of completion of the basic or continuing course of training as provided in subsection (2) or (3) of this section, or the additional training as required in Section 37-3-4(5)(c), the school board member shall be removed from office by the Attorney General. In the event of a medical or other catastrophic hardship that prevents such school board member from obtaining the required training or filing such certificate, as may be defined by the Board of Directors of the Mississippi School Boards Association by rule and regulation, an additional period of three (3) months may be allowed to satisfy the requirements of subsection (2) or (3).

**HISTORY: Laws, 1991, ch. 502, § 11; Laws, 1993, ch. 562, § 3; Laws, 1998, ch. 564, § 2; Laws, 2000, ch. 533, § 7; Laws, 2000, ch. 610, §§ 5, 7; Laws, 2002, ch. 611, § 5; Laws, 2006, ch. 334, § 2; Laws, 2006, ch. 335, § 2; Laws, 2008, ch. 338, § 2, eff from and after July 1, 2008.**

**Joint Legislative Committee Note —** Section 2 of ch. 334, Laws of 2006, effective from and after July 1, 2006 (approved March 9, 2006), amended this section. Section 2 of ch. 335, Laws of 2006, effective from and after July 1, 2006 (approved March 13, 2006), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 335, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Editor's Notes —** The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 502, § 11, on July 9, 1991.

On July 13, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1998, ch. 564, § 2.

Laws of 2000, ch. 610, § 7, provides:

"SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed."

The repeal had the effect of repealing the amendments to this section made by Laws of 2000, ch. 533, § 7.

The United States Attorney General, by letter dated July 28, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2000, ch. 610, § 5.

## OPINIONS OF THE ATTORNEY GENERAL

Training is a prerequisite to taking office as a local school board member. Thompson, Oct. 30, 1991, A.G. Op. #91-0795.

Individual need not comply with filing requirements as a prerequisite to qualifying as a candidate; however, if the individual has not previously filed the required certificate of completion with the circuit clerk, he would be required to do so in order to be eligible to be sworn into office or exercise any functions of the office. Hart, Feb. 20, 1992, A.G. Op. #91-0105.

If newly appointed school board member fails to file certificate of training within six months from commencement of term of office, vacancy will be declared. Gex, March 4, 1992, A.G. Op. #92-0151.

Candidate must possess high school diploma or GED equivalent before he enters duties of office but is not required to have same to qualify as candidate. Union County Election Commission, Sept. 30, 1992, A.G. Op. #92-0779.

Specific language of Miss. Code Section 37-7-306 (1) provides that prerequisite requirement of high school education or GED equivalent only applies to individuals elected to school board for full term; therefore, individual elected to serve only remainder of term is not subject to this requirement. Jones, May 26, 1993, A.G. Op. #93-0368.

School board member selected under statute with term of office commencing January 1, 1993 who had not received training by June 31, 1993 would not be removed from office because pursuant to House Bill 1441 [Laws of 1993, ch. 562, § 3], period for training was reset to begin April 15, 1993 and therefore such an individual would have six months from April 15 in which to obtain the required training. Bradley, July 29, 1993, A.G. Op. #93-0530.

Most agricultural high schools have been subsumed into community college systems which administer them; therefore, members of community college board who operate agricultural high school are not required to attend training sessions required for school board members of local school districts; only agricultural high school operated by board of trustees independent of community college would be required to meet training requirements of Section 37-7-306. Bradley Sept. 9, 1993, A.G. Op. #93-0643.

School board members must receive six hours of continuing education training during the 2004-2005 school year. Chaney, Aug. 6, 2004, A.G. Op. 04-0334.

The Mississippi School Boards Association has the authority to charge an amount equal to the actual cost of training for continuing education for school board members. Chaney, Aug. 6, 2004, A.G. Op. 04-0334.

## § 37-7-307. Regulation of leaves for licensed and nonlicensed employees; employment of substitute teachers; donations of leave to other employees; accumulated leave; conversion of certain vacation days to sick leave; definitions.

(1) For purposes of this section, the term "licensed employee" means any employee of a public school district required to hold a valid license by the Commission on Teacher and Administrator Education, Certification and Licensure and Development.

(2) The school board of a school district shall establish by rules and regulations a policy of sick leave with pay for licensed employees and teacher assistants employed in the school district, and such policy shall include the following minimum provisions for sick and emergency leave with pay:

(a) Each licensed employee and teacher assistant, at the beginning of each school year, shall be credited with a minimum sick leave allowance, with pay, of seven (7) days for absences caused by illness or physical disability of the employee during that school year.

(b) Any unused portion of the total sick leave allowance shall be carried over to the next school year and credited to such licensed employee and teacher assistant if the licensed employee or teacher assistant remains employed in the same school district. In the event any public school licensed employee or teacher assistant transfers from one public school district in Mississippi to another, any unused portion of the total sick leave allowance credited to such licensed employee or teacher assistant shall be credited to such licensed employee or teacher assistant in the computation of unused leave for retirement purposes under Section 25-11-109. Accumulation of sick leave allowed under this section shall be unlimited.

(c) No deduction from the pay of such licensed employee or teacher assistant may be made because of absence of such licensed employee or teacher assistant caused by illness or physical disability of the licensed employee or teacher assistant until after all sick leave allowance credited to such licensed employee or teacher assistant has been used.

(d) For the first ten (10) days of absence of a licensed employee because of illness or physical disability, in any school year, in excess of the sick leave allowance credited to such licensed employee, there shall be deducted from the pay of such licensed employee the established substitute amount of licensed employee compensation paid in that local school district, necessitated because of the absence of the licensed employee as a result of illness or physical disability. In lieu of deducting the established substitute amount from the pay of such licensed employee, the policy may allow the licensed employee to receive full pay for the first ten (10) days of absence because of illness or physical disability, in any school year, in excess of the sick leave allowance credited to such licensed employee. Thereafter, the regular pay of such absent licensed employee shall be suspended and withheld in its entirety for any period of absence because of illness or physical disability during that school year.

(3)(a) Beginning with the school year 1983-1984, each licensed employee at the beginning of each school year shall be credited with a minimum personal leave allowance, with pay, of two (2) days for absences caused by personal reasons during that school year. Effective for the 2010-2011 and 2011-2012 school years, licensed employees shall be credited with an additional one-half (1/2) day of personal leave for every day the licensed employee is furloughed without pay as provided in Section 37-7-308. Except as otherwise provided in paragraph (b) of this subsection, such personal leave shall not be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday. Personal leave may be used for professional purposes, including absences caused by attendance of such licensed employee at a seminar, class, training program, professional association or other functions designed for educators. No deduction from the pay of such licensed employee may be made because of absence of such licensed employee caused by personal reasons until after all personal leave allowance credited to such licensed employee has been used. However, the superintendent of a school district, in his discretion, may allow a licensed employee personal leave in addition to any minimum personal leave allowance, under the condition that there shall be deducted from the salary of such licensed employee the actual amount of any compensation paid to any person as a substitute, necessitated because of the absence of the licensed employee. Any unused portion of the total personal leave allowance up to five (5) days shall be carried over to the next school year and credited to such licensed employee if the licensed employee remains employed in the same school district. Any personal leave allowed for a furlough day shall not be carried over to the next school year.

(b) Notwithstanding the restrictions on the use of personal leave prescribed under paragraph (a) of this subsection, a licensed employee may use personal leave as follows:

(i) Personal leave may be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday if, on the applicable day, an immediate family member of the employee is being deployed for military service.

(ii) Personal leave may be taken on a day previous to a holiday or a day after a holiday if an employee of a school district has either a minimum of ten (10) years' experience as an employee of that school district or a minimum of thirty (30) days of unused accumulated leave that has been earned while employed in that school district.

(iii) Personal leave may be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday if, on the applicable day, the employee has been summoned to appear for jury duty or as a witness in court.

(iv) Personal leave may be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday if, on the applicable day, an immediate family member of the employee dies or funeral services are held. Any day of the three (3) bereavement days may be used at the discretion of the teacher, and are not required to be taken in consecutive succession.

For the purpose of this subsection (3), the term "immediate family member" means spouse, parent, stepparent, child or stepchild, grandparent or sibling, including a stepbrother or stepsister.

(4) Beginning with the school year 1992-1993, each licensed employee shall be credited with a professional leave allowance, with pay, for each day of absence caused by reason of such employee's statutorily required membership and attendance at a regular or special meeting held within the State of Mississippi of the State Board of Education, the Commission on Teacher and Administrator Education, Certification and Licensure and Development, the Commission on School Accreditation, the Mississippi Authority for Educational Television, the meetings of the state textbook rating committees or other meetings authorized by local school board policy.

(5) Upon retirement from employment, each licensed and nonlicensed employee shall be paid for not more than thirty (30) days of unused accumulated leave earned while employed by the school district in which the employee is last employed. Such payment for licensed employees shall be made by the school district at a rate equal to the amount paid to substitute teachers and for nonlicensed employees, the payment shall be made by the school district at a rate equal to the federal minimum wage. The payment shall be treated in the same manner for retirement purposes as a lump-sum payment for personal leave as provided in Section 25-11-103(f). Any remaining lawfully credited unused leave, for which payment has not been made, shall be certified to the Public Employees' Retirement System in the same manner and subject to the same limitations as otherwise provided by law for unused leave. No payment for unused accumulated leave may be made to either a licensed or nonlicensed employee at termination or separation from service for any purpose other than for the purpose of retirement.

(6) The school board may adopt rules and regulations which will reasonably aid to implement the policy of sick and personal leave, including, but not limited to, rules and regulations having the following general effect:

(a) Requiring the absent employee to furnish the certificate of a physician or dentist or other medical practitioner as to the illness of the absent licensed employee, where the absence is for four (4) or more consecutive school days, or for two (2) consecutive school days immediately preceding or following a nonschool day;

(b) Providing penalties, by way of full deduction from salary, or entry on the work record of the employee, or other appropriate penalties, for any materially false statement by the employee as to the cause of absence;

(c) Forfeiture of accumulated or future sick leave, if the absence of the employee is caused by optional dental or medical treatment or surgery which could, without medical risk, have been provided, furnished or performed at a time when school was not in session;

(d) Enlarging, increasing or providing greater sick or personal leave allowances than the minimum standards established by this section in the discretion of the school board of each school district.

(7) School boards may include in their budgets provisions for the payment of substitute employees, necessitated because of the absence of regular licensed employees. All such substitute employees shall be paid wholly from district funds, except as otherwise provided for long-term substitute teachers in Section 37-19-20. Such school boards, in their discretion, also may pay, from district funds other than adequate education program funds, the whole or any part of the salaries of all employees granted leaves for the purpose of special studies or training.

(8) The school board may further adopt rules and regulations which will reasonably implement such leave policies for all other nonlicensed and hourly paid school employees as the board deems appropriate. Effective for the 2010-2011 and 2011-2012 school years, nonlicensed employees shall be credited with an additional one-half (1/2) day of personal leave for every day the

nonlicensed employee is furloughed without pay as provided in Section 37-7-308.

(9) Vacation leave granted to either licensed or nonlicensed employees shall be synonymous with personal leave. Unused vacation or personal leave accumulated by licensed employees in excess of the maximum five (5) days which may be carried over from one year to the next may be converted to sick leave. The annual conversion of unused vacation or personal leave to sick days for licensed or unlicensed employees shall not exceed the allowable number of personal leave days as provided in Section 25-3-93. The annual total number of converted unused vacation and/or personal days added to the annual unused sick days for any employee shall not exceed the combined allowable number of days per year provided in Sections 25-3-93 and 25-3-95. Local school board policies that provide for vacation, personal and sick leave for employees shall not exceed the provisions for leave as provided in Sections 25-3-93 and 25-3-95. Any personal or vacation leave previously converted to sick leave under a lawfully adopted policy before May 1, 2004, or such personal or vacation leave accumulated and available for use prior to May 1, 2004, under a lawfully adopted policy but converted to sick leave after May 1, 2004, shall be recognized as accrued leave by the local school district and available for use by the employee. The leave converted under a lawfully adopted policy prior to May 1, 2004, or such personal and vacation leave accumulated and available for use as of May 1, 2004, which was subsequently converted to sick leave may be certified to the Public Employees' Retirement System upon termination of employment and any such leave previously converted and certified to the Public Employees' Retirement System shall be recognized.

(10)(a) For the purposes of this subsection, the following words and phrases shall have the meaning ascribed in this paragraph unless the context requires otherwise:

(i) "Catastrophic injury or illness" means a life-threatening injury or illness of an employee or a member of an employee's immediate family that totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the local school district for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries, are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, that result in intermittent absences from work and that are long-term in nature and require long recuperation periods may be considered catastrophic.

(ii) "Immediate family" means spouse, parent, stepparent, sibling, child or stepchild, grandparent, stepbrother or stepsister.

(b) Any school district employee may donate a portion of his or her unused accumulated personal leave or sick leave to another employee of the same school district who is suffering from a catastrophic injury or illness or who has a member of his or her immediate family suffering from a catastrophic injury or illness, in accordance with the following:

(i) The employee donating the leave (the "donor employee") shall designate the employee who is to receive the leave (the "recipient employee") and the amount of unused accumulated personal leave and sick leave that is to be donated, and shall notify the school district superintendent or his designee of his or her designation.

(ii) The maximum amount of unused accumulated personal leave that an employee may donate to any other employee may not exceed a number of days that would leave the donor employee with fewer than seven (7) days of personal leave remaining, and the maximum amount of unused accumulated sick leave that an employee may donate to any other employee may not exceed fifty percent (50%) of the unused accumulated sick leave of the donor employee.

(iii) An employee must have exhausted all of his or her available leave before he or she will be eligible to receive any leave donated by another employee. Eligibility for donated leave shall be based upon review and approval by the donor employee's supervisor.

(iv) Before an employee may receive donated leave, he or she must provide the school district superintendent or his designee with a physician's statement that states that the illness meets the catastrophic criteria established under this section, the beginning date of the catastrophic injury or illness, a description of the injury or illness, and a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

(v) Before an employee may receive donated leave, the superintendent of education of the school district shall appoint a review committee to approve or disapprove the said donations of leave, including the determination that the illness is catastrophic within the meaning of this section.

(vi) If the total amount of leave that is donated to any employee is not used by the recipient employee, the whole days of donated leave shall be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees.

(vii) Donated leave shall not be used in lieu of disability retirement.

(11) Effective January 1, 2020, the provisions of this section shall be fully applicable to any licensed employee of the Mississippi School of the Arts (MSA).

**HISTORY: Codes, 1942, § 6328-28; Laws, 1953, Ex Sess, ch. 17, § 8; Laws, 1978, ch. 513, § 1, 1982, ch. 491; Laws, 1986, ch. 492, § 13; Laws, 1986, ch. 493; Laws, 1987, ch. 307, § 5, 1992, ch. 450, § 1; Laws, 1994, ch. 623, § 1; Laws, 1995, ch. 586, § 1; Laws, 1996, ch. 548, § 1; Laws, 1998, ch. 580, § 1; Laws, 1999, ch. 561, § 2; Laws, 2003, ch. 458, § 1; Laws, 2003, ch. 546, § 1; Laws, 2004, ch. 480, § 1; Laws, 2005, ch. 354, § 1; Laws, 2010, ch. 486, § 3; Laws, 2012, ch. 463, § 1; Laws, 2012, ch. 543, § 7; Laws, 2015, ch. 341, § 1, eff from and after July 1, 2015; Laws, 2019, ch. 307, § 1, eff from and after July 1, 2019; Laws, 2019, ch. 432, § 5, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of ch. 458, Laws of 2003, effective July 1, 2003 (approved March 23, 2003), amended this section. Section 1 of ch. 546, Laws of 2003, effective July 1, 2003 (approved April 22, 2003), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 546, Laws of 2003, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the fourth sentence of (a), substituting "May 1, 2004" for "the effective date of Senate Bill No. 2297, 2004 Regular Session."

Section 7 of ch. 543, Laws of 2012, effective from and after July 1, 2012 (approved May 22, 2012), amended this section. Section 1 of ch. 463, Laws of 2012, effective July 1, 2012 (approved April 23, 2012), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 543, Laws of 2012, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date supersedes all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In (10)(b)(v), the word "within" was substituted for "with." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Section 1 of Chapter 307, Laws of 2019, effective July 1, 2019 (approved March 15, 2019), amended this section. Section 5 of Chapter 532, Laws of 2019, effective July 1, 2019 (approved March 29, 2019), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 12, 2019, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in the third sentence of subsection (5) by substituting "Section 25-11-103(f)" for "Section 25-11-103(e)." The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Editor's Notes —** Section 37-19-20 referred to in (7) was repealed by Laws of 2002, ch. 551 § 6, effective from and after July 1, 2002.

Section 37-7-308, referred to in (8), was repealed by Laws of 2010, ch. 486, § 2, effective July 1, 2012.

**Amendment Notes —** The first 2019 amendment (ch. 307),, in (3), added (3)(b)(iv) and the last paragraph; and added "grandparent, stepbrother or stepsister" at the end of (10)(a)(ii).

The second 2019 amendment (ch. 432), added (11).

**Cross References —** Public Employees' Retirement System generally, see § 25-11-101 et seq.

Substitute-teaching by retired school teachers over seventy years of age, see § 25-11-127.

Mississippi State Board of Education generally, see § 37-1-1 et seq.

Commission on Teacher and Administrator Education, Certification and Licensure and Development created, see § 37-3-2.

Commission on School Accreditation created, see § 37-17-3.

Mississippi authority for educational television generally, see § 37-63-1 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

Since the Constitution requires a full-time school teacher be a member of the State board of education, there should be no impediment to this service. It follows that the local school board should use its discretion to allow the teacher chosen as much freedom as possible to carry out the duties and responsibilities of this position. Davis, Oct. 31, 1991, A.G. Op. #91-0815.

No penalty should attach itself directly or indirectly to the appointee to this constitutional board. Davis, Oct. 31, 1991, A.G. Op. #91-0815.

School district may establish a procedure whereby an individual teacher may petition the school board for a grant of additional sick leave due to exceptional circumstances. Ellis, May 8, 1992, A.G. Op. #92-0342.

Sick leave is personal to teacher and there appears to be no method authorizing transfer of sick leave from one employee to another, although pursuant to Section 37-7-307 subsection (5)(d) district may establish procedure wherein an individual teacher may petition board for grant of additional sick leave under exceptional circumstances. Atkinson, Feb. 3, 1994, A.G. Op. #94-0040.

Any unused leave for which payment is not received will be applied to creditable service in accordance with Section 25-11-103(h). Such authorization would be effective for payment of unused leave to the person designated by such employee for this purpose, or, in the absence of such designation, to the beneficiary of such employee, or to the estate, in the event of the death of the employee prior to retirement. Walker, May 11, 1995, A.G. Op. #95-0319.

The statute allows leave to be donated for catastrophic injury or illness, but does not allow for the donation of leave in the event of death. Bordis, October 16, 1998, A.G. Op. #98-0562.

The estate of a deceased employee may not donate unused accumulated sick leave or personal leave to another district employee. Bordis, October 16, 1998, A.G. Op. #98-0562.

“Immediate family,” as defined in subsection (9)(ii) does not include a grandchild. Bordis, October 16, 1998, A.G. Op. #98-0562.

Although there is no authority to establish a scholarship program within the Jackson Public School District to reimburse teachers one-half of the tuition cost of gaining certification in library science, the authority granted in subsection (7) of this section could be used to help effect such purpose. Sargent, April 2, 1999, A.G. Op. #99-0122.

Because this section does not differentiate between sick leave or personal leave, an employee may, upon retirement from employment, be paid for up to 30 days total sick and/or personal leave; this payment can be made only in cases where the employee makes a complete severance of employment in state service and makes application for retirement benefits following separation. Cartier, June 4, 1999, A.G. Op. #99-0244.

A county school district did not have authority to pay a teacher for unused accumulated leave as the statute in effect at the time the teacher resigned did not provide for payment of unused accumulated leave to certificated employees. Chaney, Jr., May 1, 2000, A.G. Op. #2000-0191.

A school board cannot pay a retiring licensed employee at the employee’s daily rate of pay rather than the substitute teacher rate of pay. McAlpin, July 14, 2000, A.G. Op. #2000-0354.

A county school district may enact a policy that allows an employee two days leave in the following year if the employee has perfect attendance in the previous year. Ball, Nov. 19, 2000, A.G. Op. #2000-0650.

The statute applies to administrative/supervisory employees of the school district, as these employees must either be classified as licensed or non-licensed employees. Harral, June 21, 2002, A.G. Op. #02-0236.

Whether to permit pro-rata, incremental deductions of leave is within the discretion of the school district board and exercise of that discretion should be evidenced by the board in it’s rules and regulations implementing sick and personal leave policies. Smith, Nov. 15, 2002, A.G. Op. #02-0615.

A school board cannot pay a retiring administrator at the board's substitute administrator rate of pay rather than the substitute teacher rate of pay. Marro, July 7, 2003, A.G. Op. 03-0335.

If a school district has a policy which provides for an individual to be paid for any accrued leave upon death or termination of employment, the district may make payment for that unused, uncompensated leave to the employee upon termination of employment, and, in the event of the death, such payment may be made to the person designated by such employee prior to employee's death. Adams, Oct. 3, 2003, A.G. Op. 03-0468.

Subdivision (6)(d) of this section provides the authority to a school board to adopt a policy which would allow for the payment of unused accrued personal or sick leave to employees who leave service for reasons other than retirement. While subsection (5) limits the rate of pay for the lump sum payment upon retirement to either the substitute teacher rate of pay or the federal minimum wage, any policy adopted by local school boards for employees leaving service for reasons other than retirement would not be so limited, and could allow employees to receive a lump sum payment calculated at their regular rate of pay, and for any number of days as determined by the school board. This opinion clarifies Adams, Oct. 3, 2003, A.G. Op. 03-0468. Ready, Mar. 26, 2004, A.G. Op. 03-0644.

Subsection (6) of this section authorizes expansion of sick and personal leave allowances, but does not grant any authority to local school districts to create any additional types of leave. Further, only sick and personal leave are certifiable to PERS for creditable service upon retirement. Opinion clarifies Adams, Oct. 3, 2003, A.G. Op. 03-0468. Ready, Mar. 26, 2004, A.G. Op. 03-0644.

The specific limitation of subsection (3) of this section detailing how much time may be carried over and under what circumstances it may be carried over is controlling. Opinion clarifies Adams, Oct. 3, 2003, A.G. Op. 03-0468. Ready, Mar. 26, 2004, A.G. Op. 03-0644.

No authority exists for a school district to enact a policy authorizing employees to convert accumulated personal leave to sick leave for purposes of certification to PERS for additional service credit. Opinion clarifies Adams, Oct. 3, 2003, A.G. Op. 03-0468. Ready, Mar. 26, 2004, A.G. Op. 03-0644.

The board of trustees of a local school district must make a determination on a case-by-case basis as to whether an employee's particular illness is a condition which meets the statutory definition of "catastrophic injury or illness." Cox, July 22, 2005, A.G. Op. 05-0499.

As a result of the 2005 amendment to Section 37-7-307, a school district may not maintain its existing leave policy that exceeds the combined personal and sick leave policy for state employees. The amendment supercedes McAlpin, July 31, 1995, A.G. Op. 95-0405. Chaney, Aug. 12, 2005, A.G. Op. 05-0367.

A school board policy that grants a "bonus" day of personal leave for perfect attendance for both licensed and non-licensed employees is permissible under Section 37-7-307 and would not violate Miss. Const. Art. 4, § 96, as long as the extra leave does not cause the total amount of leave granted to the employees to exceed the limitations of Section 37-7-307(9). Jacks, Dec. 27, 2005, A.G. Op. 05-0600.

A school district may implement a leave policy which pays part-time hourly employees for leave taken in recognition of a federal holiday if the holidays granted do not exceed those permitted by the state and if the policy is applied consistently to all part-time hourly employees. Chaney, Feb. 2, 2006, A.G. Op. 04-0646.

A serious and complicated pregnancy that totally incapacitates an employee from work may be determined to be "catastrophic illness," as defined by Section 37-7-307(10)(a)(I). Elliot, Feb. 10, 2006, A.G. Op. 06-0032.

### RESEARCH REFERENCES

**ALR.**

Who is eligible employee under § 101(2) of family and medical leave act (29 U.S.C.S. § 2611(2)). 166 A.L.R. Fed. 569.

Adequacy of notice to employer of need for leave under Federal Family and Medical Leave Act of 1993. 184 A.L.R. Fed. 171.

**Am. Jur.**

67B Am. Jur. 2d, Schools § 200.

16A Am. Jur. Legal Forms 2d, Schools §§ 229:253 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 461, 522, 531.

## § 37-7-308. Repealed.

Repealed by its own terms, effective July 1, 2012.

§ 37-7-308. [Laws, 2010, ch. 486, § 2, eff from and after passage (approved Apr. 7, 2010.)]

**Editor's Notes** — Former § 37-7-308 related to the furlough of instructional, noninstructional and administrative employees.

## § 37-7-309. Repealed.

Repealed by Laws, 1986, ch. 492, § 46, eff from and after July 1, 1987.
[Codes, 1942, § 6328-30; Laws, 1953, Ex Sess, ch. 17, § 10]

**Editor's Notes** — Former § 37-7-309 provided for expenditure of school district funds for incidentals.

## § 37-7-311. Organization of school.

The school board shall organize a school so as to avoid unnecessary duplication and shall determine what grades shall be taught at each school and shall have the power to specify attendance areas and to designate the school each pupil shall attend.

**HISTORY: Codes, 1942, § 6328-31; Laws, 1953, Ex Sess, ch. 17, § 11; Laws, 1986, ch. 492, § 14, eff from and after July 1, 1987.**

**Cross References** — Abolition, reorganization or alteration of district by school board, see §§ 37-7-103, 37-7-105.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Consolidation of schools; transfer of students.
3. Appeal.
4. Miscellaneous.

**1. In general.**

The grant to county boards of education of power to organize and establish schools does not confer judicial or quasi-judicial power, but the power granted is purely administrative and legislative. County Board of Education v. Smith, 239 Miss. 53, 121 So. 2d 139, 1960 Miss. LEXIS 266 (Miss. 1960).

**2. Consolidation of schools; transfer of students.**

A public school board had the authority to consolidate schools within its district and to reassign students en masse; the plan was not a "reorganization of the school district" within the meaning of § 37-7-105. Section 37-7-105 and its petition, publication and referendum procedures do not apply to everything the school board may wish to abolish, alter or reorganize. The statute applies only where the school board "abolishes, alters or reorganizes a school district." The phrase "school district" imports the geographic boundaries of the district and perhaps the corporate organization or structure thereof. The school board's plan did not alter the existing structure of the school district, which remained a county-wide district, and did not reorganize corporate structure, and therefore §§ 37-7-103 and 37-7-105 did not apply. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

It was not the intention of the legislature by this section [Code 1942, § 6328-31] to mean that the board of trustees may transfer students en masse from one school or attendance center to another, for where there is a transfer of pupils other than on an individual basis it would prevent uniformity by permitting the center losing pupils to keep all the money allocated to it. Board of Educ. v. Wilburn, 223 So. 2d 665, 1969 Miss. LEXIS 1289 (Miss. 1969), overruled, In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

**3. Appeal.**

Courts on appeal from a determination of a county board of education are limited to the question whether the action of the board is supported by substantial evidence or is arbitrary or capricious, or transcends its power, or violates some statutory or constitutional right of an interested party. County Board of Education v. Smith, 239 Miss. 53, 121 So. 2d 139, 1960 Miss. LEXIS 266 (Miss. 1960).

**4. Miscellaneous.**

Students who live in one school district organized under Ch 12, Laws of 1953, Ex Session former [Miss. Code Ann. §§ 37-7-1 et seq], may not attend school in another school district without the consent and approval of the board of trustees of the district wherein such students reside. Hinze v. Winston County Board of Education, 233 Miss. 867, 103 So. 2d 353, 1958 Miss. LEXIS 450 (Miss. 1958).

### OPINIONS OF THE ATTORNEY GENERAL

Sections 37-7-103, 37-7-113 and 37-7-311 allow a school board to organize its schools so as to serve the best interests of the schools and ultimately the students, and to avoid unnecessary duplication. Where the actions of local school boards do nothing to alter the existing geographical features, boundaries, or corporate structure of the school districts there is no necessity to seek State Board of Education approval. Burnham, February 15, 1995, A.G. Op. #95-0029.

## § 37-7-313. Repealed.

Repealed by Laws, 1986, ch. 492, § 46, eff from and after July 1, 1987.

[Codes, 1942, §§ 6328-06, 6328-74; Laws, 1953, Ex Sess, ch. 12, § 6; Laws, 1956, ch. 266, § 4; Laws, 1959, Ex Sess, ch. 29, 2; Laws, 1960, ch. 301, § 3; Laws, 1968, ch. 386.]

**Editor's Notes —** Former § 37-7-313 authorized for contracts for attendance and transportation of pupils at schools operated by other school districts.

## § 37-7-315. Designation of school buildings and attendance centers.

In creating school districts under the provisions of Article 1 of this chapter, it shall not be necessary that the school board, in the order creating such districts, specify or designate the location of the school houses or attendance centers therein, and existing school buildings shall be retained as places of attendance until changed in the manner hereinafter set forth. Where any existing facilities or buildings shall not be used as attendance centers, the school board may utilize such facilities and buildings in connection with any related school activity which said school board may deem advisable.

The school board of any school district shall have the power and authority to designate the locations for school buildings and attendance centers in the school district subject to its jurisdiction and to change, alter or abolish the location of such school buildings and attendance centers from time to time as may be required by the educational needs of such school district. Where students from three (3) or more school districts are in attendance at one (1) attendance center by order of the respective school boards of the school districts, the use of the attendance center shall not be changed, altered or abolished except upon order of a majority of each of the school boards of the school districts from which pupils have been in attendance at the attendance center for the scholastic year; any acts, decisions, orders or resolutions by the school board of any such school district in conflict with this provision shall be null and void. If any change or alteration of the location of a school building or attendance center shall involve the construction of new school facilities, or the making of additions to, or the major repair, alteration or renovation of existing facilities, then such change or alteration shall not be effective until same shall have been submitted to and approved by the State Board of Education. There may be located and established in any school district as many school buildings and attendance centers as the educational needs of such district shall require. The school board of the school district shall have the power and authority to specify the attendance areas which shall be served by each school building or attendance center, and to change or alter same from time to time as necessity requires.

**HISTORY: Codes, 1942, § 6328-05; Laws, 1953, Ex Sess, ch. 12, § 5; Laws, 1960, ch. 303; Laws, 1986, ch. 492, § 15, eff from and after July 1, 1987.**

**Editor's Notes —** Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987.

For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Abolition, reorganization or alteration of district by school board, see §§ 37-7-103, 37-7-105.

Acquisition of land outside of school district for construction of needed school buildings or other facilities, see § 37-7-401.

Joint construction of buildings or operation of schools by adjoining school districts,

see § 37-7-403.

Roads, driveways and parking areas on school district property, and expenditure of funds for their construction and upkeep, see § 65-7-74.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Consolidation of schools; transfer of students.

**1. In general.**

Although ordinarily private individual may not maintain suit against school district to enforce zoning ordinance or to enjoin what is in essence public nuisance created by construction of school building, where construction of school building in violation of municipal offstreet parking ordinance would obstruct abutting landowner's right of ingress and egress, landowner may obtain injunction against construction of building unless and until school district complies with parking ordinance. Robinson v. Indianola Municipal Separate School Dist., 467 So. 2d 911, 1985 Miss. LEXIS 1973 (Miss. 1985).

**2. Consolidation of schools; transfer of students.**

A public school board had the authority to consolidate schools within its district and to reassign students en masse; the plan was not a "reorganization of the school district" within the meaning of § 37-7-105. Section 37-7-105 and its petition, publication and referendum procedures do not apply to everything the school board may wish to abolish, alter or reorganize. The statute applies only where the school board "abolishes, alters or reorganizes a school district." The phrase "school district" imports the geographic boundaries of the district and perhaps the corporate organization or structure thereof. The school board's plan did not alter the existing structure of the school district, which remained a countywide district, and did not reorganize corporate structure, and therefore §§ 37-7-103 and 37-7-105 did not apply. In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

## OPINIONS OF THE ATTORNEY GENERAL

Each county is required under Miss. Code Ann. § 19-7-1 to build a jail within the corporate limits of the municipality where the courts are required to sit. A municipality is obligated to grant a special exception to its zoning ordinances unless it is determined, consistent with the facts, that construction of a county jail would create a public nuisance or a clear and present danger to the public health and welfare. Yancey, Mitchell, March 23, 2007, A.G. Op. #07-00120, 2007 Miss. AG LEXIS 75.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 102.

**CJS.**

78 C.J.S., Schools, and School Districts §§ 739, 740, 745-754.

## § 37-7-317. Transfer of school recreational areas to counties and municipalities during summer recess.

The school board of any school district is hereby authorized, in its discretion, to transfer jurisdiction and control of any recreational property or part thereof under its dominion to the governing authorities of any municipality or county in which such property is located, provided, such transfer is temporary and commences not sooner than the day following the last school day of the academic year and ends not later than the day prior to the beginning of the next succeeding academic year. Any such transfer shall be made only with the concurrence of the governing authorities of any such municipality or county, and any agreement therefor shall be on such terms and conditions as said governing authorities and said school board shall provide. Any such agreement may include a provision that while such land is in the possession of said governing authorities, the municipality or the county, as the case may be, shall be liable for the upkeep, maintenance and repair of such property, the cost of which shall be paid out of any funds available to any such municipality or county.

**HISTORY: Laws, 1973, ch. 415, § 1; Laws, 1986, ch. 492, § 16, eff from and after July 1, 1987.**

**Cross References** — Abolition, reorganization or alteration of district by school board, see §§ 37-7-103, 37-7-105.

### RESEARCH REFERENCES

**ALR.**

Use of school property for other than public school or religious purposes. 94 A.L.R.2d 1274.

## § 37-7-319. Purchase of group liability insurance coverage.

All public school boards may purchase group insurance coverage for the liability of all of its active full-time instructional and noninstructional personnel. Such policy shall be paid for with any funds available other than state minimum education program funds.

**HISTORY: Laws, 1974, ch. 355; Laws, 1985, ch. 474, § 47; Laws, 1986, ch. 438, § 14; Laws, 1986, ch. 492, § 17; Laws, 1987, ch. 483, § 19; Laws, 1988, ch. 442, § 16; Laws, 1989, ch. 537, § 15; Laws, 1990, ch. 518, § 16; Laws, 1991, ch. 618, § 15; Laws, 1992, ch. 491 § 16, eff from and after passage (approved May 12, 1992).**

**Cross References** — Insurance on school property generally, see § 37-7-303.

### RESEARCH REFERENCES

**ALR.**

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Tort liability of public schools and institutions of higher learning for accidents due to condition of buildings or equipment. 34 A.L.R.3d 1166.

Tort liability of public schools and institutions of higher learning for accidents associated with the transportation of students. 34 A.L.R.3d 1210.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events. 35 A.L.R.3d 725.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training. 35 A.L.R.3d 758.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 36 A.L.R.3d 361.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 A.L.R.3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision. 38 A.L.R.3d 830.

Personal liability of public school teacher in negligence action for personal injury or death of student. 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 A.L.R.4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student. 35 A.L.R.4th 328.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip. 68 A.L.R.5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events. 68 A.L.R.5th 663.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school. 72 A.L.R.5th 469.

**CJS.**

78A C.J.S., Schools and School Districts § 887.

**Law Reviews.**

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss. L. J. 275, Fall 1988.

## § 37-7-321. Employment and designation of peace officers; minimum level of basic law enforcement training required; operation of radio broadcasting and transmission station; interlocal agreements with other law enforcement entities for provision of certain equipment or services.

(1) The school board of any school district within the State of Mississippi, in its discretion, may employ one or more persons as security personnel and may designate such persons as peace officers in or on any property operated for school purposes by such board upon their taking such oath and making such bond as required of a constable of the county in which the school district is situated.

(2) Any person employed by a school board as a security guard or school resource officer or in any other position that has the powers of a peace officer must receive a minimum level of basic law enforcement training, as jointly determined and prescribed by the Board on Law Enforcement Officer Standards and Training and the State Board of Education, within two (2) years of

the person's initial employment in such position. Upon the failure of any person employed in such position to receive the required training within the designated time, the person may not exercise the powers of a peace officer in or on the property of the school district.

(3) The school board is authorized and empowered, in its discretion, and subject to the approval of the Federal Communications Commission, to install and operate a noncommercial radio broadcasting and transmission station for educational and vocational educational purposes.

(4) If a law enforcement officer is duly appointed to be a peace officer by a school district under this section, the local school board may enter into an interlocal agreement with other law enforcement entities for the provision of equipment or traffic control duties, however, the duty to enforce traffic regulations and to enforce the laws of the state or municipality off of school property lies with the local police or sheriff's department which cannot withhold its services solely because of the lack of such an agreement.

**HISTORY: Laws, 1975, ch. 351, § 1; Laws, 1986, ch. 492, § 18; Laws, 2000, ch. 437, § 1; Laws, 2006, ch. 441, § 2, eff from and after July 1, 2006.**

## JUDICIAL DECISIONS

**1. Immunity.**

While Miss. Code Ann. § 37-7-321 and Miss. Code Ann. § 37-7-323 allowed schools to retain independent contractors to work as peace officers on school grounds, the legislature however did not provide an express grant of immunity to those independent contractors under Miss. Code Ann. § 19-19-5 or the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-9; accordingly, the trial court erred in finding that the security contractor was immune to suit by virtue of the MTCA. Knight v. Terrell, 961 So. 2d 30, 2007 Miss. LEXIS 408 (Miss. 2007).

## OPINIONS OF THE ATTORNEY GENERAL

A school district and a city may enter into an interlocal agreement for the provision of traffic control, although the duty to enforce traffic regulations lies with the police department and it can not withhold its services solely because of the lack of such an agreement. Noble, January 15, 1999, A.G. Op. #98-0714.

If a school board designates an off-duty law enforcement officer as a peace officer pursuant to §§ 37-7-321 and 37-7-323, then the school district imbues the security guard with the powers and authority of a constable, which is a law enforcement officer under § 19-19-5; as a law enforcement officer, this peace officer would be entitled to certain immunities from some federal and state claims. Thompson, June 25, 1999, A.G. Op. #99-0316.

If a security guard is duly appointed to be a peace officer pursuant to §§ 37-7-321 and 37-7-323, then the school district, as part of its statutory law enforcement responsibilities, may enter into an interlocal agreement with other law enforcement entities for the provision of equipment to its peace officer. Thompson, June 25, 1999, A.G. Op. #99-0316.

No statutory authority can be found which would permit school employees to search a student vehicle that is parked on a city street, to designate parking on a city street or to control traffic flow of a city street; however, a school district and a city may enter into an interlocal agreement for the provision of traffic control, and city and county law enforcement agencies are authorized to contract with school districts for the provision of police protection. Taylor, July 7, 2004, A.G. Op. 03-0334.

## § 37-7-323. Application and enforcement of general criminal laws of state.

Any act which, if committed within the limits of a city, town or village, or in any public place, would be a violation of the general laws of this state, shall be criminal and punishable if done on the campus, grounds or roads of any of the public schools of this state. The peace officers duly appointed by the school board of any school district are vested with the powers and subjected to the duties of a constable for the purpose of preventing all violations of law on school property within the district, and for preserving order and decorum thereon. The peace officers duly appointed by the school board of any school district are also vested with the powers and subjected to the duties of a constable for the purpose of preventing all violations of law that occur within five hundred (500) feet of any property owned by the school district, if reasonably determined to have a possible impact on the safety of students, faculty or staff of the school district while on said property. Provided, however, that nothing in this section shall be interpreted to require action by any such peace officer appointed by a school district to events occurring outside the boundaries of school property, nor shall any such school district or its employees be liable for any failure to act to any event occurring outside the boundaries of property owned by the school district.

**HISTORY: Laws, 1975, ch. 351, § 2; Laws, 1986, ch. 492, § 19; Laws, 2006, ch. 441, § 1, eff from and after July 1, 2006.**

### JUDICIAL DECISIONS

**1. Immunity.**

While Miss. Code Ann. § 37-7-321 and Miss. Code Ann. § 37-7-323 allowed schools to retain independent contractors to work as peace officers on school grounds, the legislature however did not provide an express grant of immunity to those independent contractors under Miss. Code Ann. § 19-19-5 or the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-9; accordingly, the trial court erred in finding that the security contractor was immune to suit by virtue of the MTCA. Knight v. Terrell, 961 So. 2d 30, 2007 Miss. LEXIS 408 (Miss. 2007).

### OPINIONS OF THE ATTORNEY GENERAL

If a school board designates an off-duty law enforcement officer as a peace officer pursuant to §§ 37-7-321 and 37-7-323, then the school district imbues the security guard with the powers and authority of a constable, which is a law enforcement officer under § 19-19-5; as a law enforcement officer, this peace officer would be entitled to certain immunities from some federal and state claims. Thompson, June 25, 1999, A.G. Op. #99-0316.

If a security guard is duly appointed to be a peace officer pursuant to §§ 37-7-321 and 37-7-323, then the school district, as part of its statutory law enforcement responsibilities, may enter into an interlocal agreement with other law enforcement entities for the provision of equipment to its peace officer. Thompson, June 25, 1999, A.G. Op. #99-0316.

## § 37-7-325. Obtaining funds from Tennessee Valley Authority's Commercial and Industrial Energy Conservation Financing Plan.

Any school district in the State of Mississippi is hereby authorized and empowered to contract with and to be contracted with by the Tennessee Valley Authority for the purpose of obtaining funds from the Tennessee Valley Authority's Commercial and Industrial Energy Conservation Financing Plan. The loan plan is designed to assist certain school districts to modify such school buildings as are determined to be energy-inefficient.

**HISTORY: Laws, 1980, ch. 379, eff from and after passage (approved April 25, 1980).**

**Cross References —** Compliance with state energy conservation standards, see § 37-47-15.

## § 37-7-327. Establishment and operation of orphanage public school.

The school board in any county in which is located an orphanage with fifty (50) or more children of educable age residing therein, at any regular or called meeting, may in its discretion establish an orphanage public school, said school to embrace only such territory owned and occupied by such orphanage, for such orphanage children, provided that a majority of the board of trustees or directors of such orphanage first petition the school board in writing to so establish a public school. Such school when established shall be designated as an orphanage public school.

After such school is established and before a public school is opened, the management of such orphanage must first tender to the superintendent of schools a satisfactory building and educational equipment for said school and enter into a contract with the superintendent of schools agreeing to furnish such building and equipment and to provide for its upkeep, fuel and such other things necessary for the successful operation of the school plant.

When an orphanage public school is established under this section and the conditions as set forth above are met, the superintendent of schools shall have all children of educable age residing in such orphanage enumerated in the manner as is now prescribed by law. Said orphanage public school shall receive financial support from any and all sources from which public school districts now receive support under the law except from funds derived from local tax levies. Said funds shall be paid into the school district depository to the credit of that orphanage public school fund and the same are to be paid out upon presentation of the superintendent's pay certificate.

An orphanage public school shall be under the direct control of the school board.

This section shall not be construed to repeal any other law or to abridge the rights and privileges heretofore exercised by the children of any orphanage.

**HISTORY: Laws, 1986, ch. 492, § 20, eff from and after July 1, 1987.**

## § 37-7-329. Establishment and operation of schools exclusively for Indians.

In a school district where there are Indian children, or children of any race not otherwise provided for by law with educational advantages, sufficient to form a school, the school board may locate one or more schools exclusively for Indians, or children of such other race, and pay salaries of teachers for same, and provide for the transportation of the children, under rules and regulations prescribed by the State Board of Education. Special licenses may be provided by the director of the division of instruction for teachers of Indian schools and other schools mentioned in this section.

**HISTORY: Laws, 1986, ch. 492, § 21, eff from and after July 1, 1987.**

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

## § 37-7-333. Control of funds for support and maintenance of schools; reports of tax collector; deposit of funds.

The school boards of all school districts shall have full control of the receipt, distribution, allotment and disbursement of all funds which may be provided for the support and maintenance of the schools of such district whether such funds be minimum education program allotments, funds derived from supplementary tax levies as authorized by law, or funds derived from any other source whatsoever except as may otherwise be provided by law for control of the proceeds from school bonds or notes and the taxes levied to pay the principal of and interest on such bonds or notes. The tax collector of each county shall make reports, in writing, verified by his affidavit, on or before the twentieth day of each month to the superintendent of schools of each school district within such county reflecting all school district taxes collected by him for the support of said school district during the preceding month. He shall at the same time pay over all such school district taxes collected by him for the support of said school district directly to said superintendent of schools.

All such allotments or funds shall be placed in the depository or depositories selected by the school board in the same manner as provided in Section 27-105-305 for the selection of county depositories. Provided, however, the annual notice to be given by the school board to financial institutions may be given by the school board at any regular meeting subsequent to the board's regular December meeting but prior to the regular May meeting. The bids of financial institutions for the privilege of keeping school funds may be received by the school board at some subsequent meeting, but no later than the regular June meeting; and the selection by the school board of the depository or depositories shall be effective on July 1 of each year. School boards shall advertise and accept bids for depositories, no less than once every three (3) years, when such board determines that it can obtain a more favorable rate of interest and less administrative processing. Such depository shall place on deposit with the superintendent of schools the same securities as required in Section 27-105-315.

In the event a bank submits a bid or offer to a school district to act as a depository for the district and such bid or offer, if accepted, would result in a contract in which a member of the school board would have a direct or indirect interest, the school board should not open or consider any bids received. The superintendent of schools shall submit the matter to the State Treasurer, who shall have the authority to solicit bids, select a depository or depositories, make all decisions and take any action within the authority of the school board under this section relating to the selection of a depository or depositories.

**HISTORY: Laws, 1986, ch. 492, § 22; Laws, 1991, ch. 534, § 2; Laws, 1992, ch. 409, § 1; Laws, 1995, ch. 422, § 1; Laws, 1997, ch. 391, § 1, eff from and after July 1, 1997.**

**Cross References** — State Treasurer generally, see § 7-9-1 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

A school board may, in the exercise its discretion, re-issue a pay warrant to a former teacher, where the original pay warrant was never deposited or negotiated. Smith, June 25, 1992, A.G. Op. #92-0470.

The board of trustees of a county school district may accept from a qualified financial institution as pledged security for school funds placed in such institution, surety bonds of any surety company authorized to do business in Mississippi, provided that such bonds are not rated substandard by any of the appropriate supervisory authorities having jurisdiction over such depository or by any recognized national rating agency engaged in the business of rating bonds; however, the board should be aware that surety bonds are not negotiable instruments which can be sold to recover lost deposits. Dickey, June 18, 1999, A.G. Op. #99-0287.

The prohibitions imposed by Section 109 of the Mississippi Constitution and Code Section 25-4-105(2) are eliminated if the school board and school superintendent follow the procedure stated in Code Section 37-7-333 when selecting a depository; however, the constitutional prohibitions are eliminated only with regard to the selection of a depository, and there would still be a conflict for other purposes, such as selecting and opening accounts in various banks, approval of securities pledged, and transfer and deposit of funds between depositories, etc. Manning, July 14, 2000, A.G. Op. #2000-0324.

Although no penalties are prescribed, the statutory requirement that in cases resulting in a conflict "the school board should not open or consider any bids received" and "the superintendent of schools shall submit the matter to the State Treasurer. . ." is mandatory. Manning, July 14, 2000, A.G. Op. #2000-0324.

The school board must be allowed to reject or approve all claims before pay certificates are issued by the superintendent of education; however, pay certificates may be issued by the superintendent without prior approval of the school board on the payment of specific claims in accordance with the exceptions set out in subsection 37-9-14(7). Henderson, Dec. 6, 2002, A.G. Op. #02-0658.

## § 37-7-335. Establishment of fees; hardship waiver policy.

(1) The school board of any school district shall be authorized to charge reasonable fees, but not more than the actual cost, for the following:

(a) Supplemental instructional materials and supplies, excluding textbooks;

(b) Any other fees designated by the local school board as fees related to a valid curriculum educational objective, including transportation; and

(c) Extracurricular activities and any other educational activities of the school district that are not designated by the local school board as valid curriculum educational objectives, such as band trips and athletic events.

(2)(a) All fees authorized to be charged under this section, except those fees authorized under subsection (1)(c) of this section, shall be charged only upon the condition that the school board of each school district shall adopt a financial hardship waiver policy that shall be kept in the strictest of confidence with all files and personal disclosures restricted from review by the general public. The financial hardship waiver policy must be distributed in writing to pupils at the time of enrollment. Any family who qualifies for the National School Lunch Program, as created by the Richard B. Russell National School Lunch Act (42 USCS Section 1751 et seq.), shall receive a financial hardship waiver.

The board shall insure that a pupil eligible to have any such fees waived as a result of an inability to pay for those fees, shall not be discriminated against nor shall there be any overt identification of any pupil who has received a financial hardship waiver by use of special tokens or tickets, announcements, posting or publication of names, physical separation, choice of materials or by any other means. In no case shall any school district's procedures expose any pupil receiving a hardship waiver to any type of stigma or ridicule by other pupils or school district personnel.

(b) The confidentiality of the financial hardship waiver policy adopted by the school board shall apply to any students who have an inability to pay any fees authorized under subsection (1) of this section.

(3) In no case shall the inability to pay the assessment of fees authorized under the provisions of this section result in a pupil being denied or deprived of any academic awards or standards, any class selection, grade, diploma, transcript or the right to participate in any activity related to educational enhancement.

**HISTORY: Laws, 1986, ch. 492, § 22; Laws, 1989, ch. 585, § 8, effective April 25, 1989 (became law without the Governor's signature); Laws, 2007, ch. 380, § 1, eff from and after July 1, 2007.**

**Editor's Notes —** Section 9, ch. 585, Laws of 1989, provides as follows:

"SECTION 9. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

**Cross References —** Textbooks generally, see § 37-43-1 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

A school board may, with proper notice, adopt a rule wherein further property belonging to the school may be withheld from a student who has lost, destroyed, or damaged school property entrusted to him or her until such time as the student or parents reimburse the school for the property. Chaney, Jr., Jan. 28, 2000, A.G. Op. #99-0723.

If optional workbooks are offered to students and a fee assessed, the workbooks should be available to all students equally and, therefore, a hardship waiver policy would have to be available to any student who was unable to purchase the workbook. Young, Oct. 5, 2001, A.G. Op. #01-0578.

## § 37-7-337. Plan to encourage community involvement in schools.

(1) The governing authorities of the county, counties or city in which a school district is located and the school board of each school district shall develop a five-year plan to encourage community involvement with the schools in such district.

(2) Districts meeting the highest levels of accreditation standards, as defined by the State Board of Education, shall be exempted from the mandatory provisions of this section.

**HISTORY: Laws, 1992, ch. 419, § 12; Laws, 2006, ch. 417, § 7; reenacted without change, Laws, 2009, ch. 345, § 9; reenacted and amended, Laws, 2009, ch. 445, § 5, eff from and after July 1, 2009.**

**Joint Legislative Committee Note —** Section 5 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), amended this section. Section 9 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 5 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes —** Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows: "SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Exemption from the provisions of this section for school districts meeting Level 4 or 5 accreditation standards, see § 37-17-12.

### § 37-7-339. Extended day and school year programs; funding; authority to adopt orders, policies, rules and regulations; goal.

(1) The school board of any local school district, in its discretion, may provide extended day and extended school year programs for kindergarten or compulsory-school-age students, or both, and may expend any funds for these purposes which are available from sources other than the adequate education program. It is not the intent of the Legislature, in enacting this section, to interfere with the Headstart program. School boards, in their discretion, may charge participants a reasonable fee for such programs.

(2) The school board of any school district may adopt any orders, policies, rules or regulations with respect to instruction within that school district for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any order, policy, rule or regulation of the State Board of Education; those school boards also may alter, modify and repeal any orders, policies, rules or regulations enacted under this subsection. Any such program pertaining to reading must further the goal that Mississippi students will demonstrate a growing proficiency in reading and will reach or exceed the national average within the next decade.

**HISTORY: Laws, 1998, ch. 497, § 2; reenacted and amended, Laws, 2002, ch. 332, § 1; reenacted and amended, Laws, 2002, ch. 611, § 1, eff from and after July 1, 2002.**

**Joint Legislative Committee Note —** Section 1 of ch. 332, Laws of 2002, effective from and after June 30, 2002 (approved March 18, 2002), amended this section. Section 1 of ch. 611, Laws of 2002, effective July 1, 2002 (approved April 25, 2002), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 611, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Cross References —** Headstart early childhood education programs, see §§ 37-21-1 through 37-21-9.

### § 37-7-341. Expenditure of funds for student field trips to nonprofit museums.

The school board of a local school district may expend funds from any available sources for the purpose of defraying the cost of student field trips to public or private nonprofit museums, including the cost of admission to such museums.

**HISTORY: Laws, 2002, ch. 611, § 2, eff from and after July 1, 2002.**

### § 37-7-342. Use of service or assistance dogs trained to alert to symptoms of illness or disability authorized in all district facilities.

(1) The Legislature recognizes the necessity of school districts to provide reasonable accommodations to students and licensed employees of a school district who are diagnosed with debilitating illnesses or disabilities, including, but not limited to, diabetes and epilepsy.

(2) The school board of any school district shall authorize the use, in all district facilities and property, of service or assistance dogs which have been specifically trained to alert people of symptoms or conditions resulting from a debilitating illness or disability that threaten their health.

(3) In providing accommodations for students, the parent of a child with such illness or disability, the teacher or teachers of the student and the appropriate school administrator shall meet and develop a written 504 Plan consistent with the provisions of Chapter 23, Title 37, Mississippi Code of 1972, that would permit the use of service dogs in the school facility. Also, in providing accommodations for students, the teacher or teachers of the student and the appropriate school administrator shall develop a plan designed to educate other students of the appropriate behavior in the presence of such dogs, as well as the proper handling of such dogs in the presence of those students who may have an allergic reaction to the dog and the reasonable care to be taken in efforts to prevent contact by students who are allergic with such dogs.

**HISTORY: Laws, 2012, ch. 548, § 4, eff from and after July 1, 2012; brought forward without change, Laws, 2018, ch. 341, § 3, eff from and after July 1, 2018.**

**Amendment Notes —** The 2018 amendment brought the section forward without change.

### § 37-7-343. Authority to enter into contracts for training and professional development of district employees.

The school board of a local school district may enter into contracts or agreements with persons or entities, public or private, to provide training or professional development activities, or both, for employees of the district.

**HISTORY: Laws, 2002, ch. 611, § 3, eff from and after July 1, 2002.**

### § 37-7-345. Authorization to establish regional educational service agency; agency to be organized as nonprofit tax exempt corporation; operation and management by public advisory board; board of directors; Executive Director; powers and responsibilities of educational service agency.

(1) A regional educational service agency (ESA) may be established in a

region of the state when twelve (12) or more school districts determine there are benefits and services that can be derived from the collective and collaborative formation of an agency for the purpose of pooling and leveraging resources for the common benefit of students, teachers, administrators and taxpayers. An educational service agency shall be incorporated in the State of Mississippi and organized under the laws of the State of Mississippi as a nonprofit corporation. The educational service agency shall obtain 501(c)(3) status with the Internal Revenue Service.

(2) The operation and management of the educational service agency shall be the responsibility of a public advisory board composed of the superintendents of schools or their designees from each participating school district.

(3) A board of directors shall be elected on an annual basis from the advisory board to oversee the day-to-day operations of the agency.

(4) The executive board shall hire an executive director to serve as the executive agent of the board of the regional educational service agency.

(5) The board of directors of a regional educational service agency shall have the authority to establish policies for the regional educational service to determine the programs and services to be provided, to employ staff, to prepare and expend the budget, to provide for financing programs and projects of the regional educational service agency, and to annually evaluate the performance of the agency. The board may purchase, hold, encumber and dispose of real property, in the name of the agency, for use as its office or for any educational service provided by the agency.

(6) The educational service agency is authorized and empowered to: develop, manage and provide support services and/or programs as determined by the needs of the local school district. Educational service agencies (ESAs) shall:

(a) Act primarily as service agencies in providing services and/or programs as identified and requested by member school districts (services may include, but are not limited to, professional development, instructional materials, educational technology, curriculum development and alternative educational programs);

(b) Provide for economy, efficiency and cost effectiveness in the cooperative delivery and purchase or lease of educational services, materials and products (services may include, but are not limited to, purchasing cooperatives, insurance cooperatives, business manager services, auditing and accounting services, school safety/risk prevention, and data processing and student records);

(c) Provide administrative services (services may include, but are not limited to, communications/public information, employee background checks, grants management, printing/publications and internships);

(d) Provide educational services through leadership, research and development in elementary and secondary education;

(e) Act in a cooperative and supportive role, including contracting, with the Mississippi Department of Education, Mississippi Institutions of Higher Learning, Mississippi Community Colleges and other state educational organizations in the development and implementation of long-range plans, strategies and goals for the enhancement of educational opportunities in elementary and secondary education; and

(f) Serve, when appropriate and as funds become available, as a repository, clearinghouse and administrator of federal, state, local and private funds on behalf of school districts which choose to participate in special programs, projects or grants in order to enhance the quality of education in Mississippi schools.

(7) The State Board of Education shall have the authority to contract with and provide funds to regional educational service agencies for any education-related service.

**HISTORY: Laws, 2004, ch. 408, § 1; Laws, 2009, ch. 344, § 1, eff from and after July 1, 2009.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (6)(e) by substituting "Mississippi Institutions of Higher Learning" for "Mississippi Institutes of Higher Learning." The Joint Committee ratified the correction at its July 22, 2010, meeting.

**Cross References** — Mississippi Department of Education generally, see § 37-3-1 et seq.

**Federal Aspects**— Tax exempt nonprofit organization in accordance with § 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

## § 37-7-346. Regional educational service agencies and State Department of Education to jointly develop a plan for increasing duties and responsibilities of the agencies.

The State Department of Education and the Regional Education Service Agencies (RESAs) shall prepare jointly a report, to be submitted before December 15, 2006, for consideration of the Legislature and Governor, detailing the plans that shall be enacted by State Board of Education policy of how RESAs will work in partnership with the State Department of Education to increase their function as a local provider of educational services and purchasing consortia as provided in Section 37-7-345(6). These services must be prescribed by policies and standards of the State Department of Education and must include, but not necessarily be limited to, professional development, instructional materials, educational technology, curriculum development, alternative educational programs, purchasing cooperatives, insurance cooperatives, business manager services, auditing and accounting services, school safety/risk prevention, data processing and student records, communications/public information, employee background checks, grants management, printing/publications and internships.

**HISTORY: Laws, 2006, ch. 346, § 6; Laws, 2006, ch. 504, § 15, eff from and after July 1, 2006.**

**Editor's Notes** — Laws of 2006, ch. 346, § 6, effective from and after July 1, 2006 (approved March 13, 2006), contained identical language to this section and also was directed to be codified as a new Section 37-7-346. The version contained in Laws of 2006, ch. 504, effective from and after July 1, 2006 (approved March 28, 2006), is printed here because it is the latest expression of legislative intent, as determined by the Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Laws of 2006, ch. 504 § 1(1), codified at § 37-161-1(1), provides as follows:

"SECTION 1. (1) This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Cross References** — Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

# ARTICLE 8.

# EMERGENCY SCHOOL LEASING AUTHORITY.

| Sec. | |
|---|---|
| 37-7-351. | Short title. |
| 37-7-353. | Legislative findings and declarations. |
| 37-7-355. | Authority to transfer or permit use of property for school district purposes. |
| 37-7-357. | Relationship of provisions with other laws. |
| 37-7-359. | Appropriations for lease rentals; tax levies. |

## § 37-7-351. Short title.

Sections 37-7-351 through 37-7-359 shall be known and may be cited as the "Emergency School Leasing Authority Act of 1986."

**HISTORY: Laws, 1986, ch. 415, § 1, eff from and after passage (approved March 31, 1986).**

**Cross References** — Pledge of monies from Education Enhancement Fund to pay debt service on debt issued under this section, see § 37-61-33.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 44, 65 et seq., 92, 94, 95.

**CJS.**

78 C.J.S., Schools and School Districts §§ 8-13, 733 et seq.

## § 37-7-353. Legislative findings and declarations.

The Legislature finds and declares that there exists an urgent shortage of adequate public school facilities, equipment and capital with which to provide such facilities and equipment for the attainment of a satisfactory level of public education in the schools of this state, and that this situation has become a critical priority of many school districts in order to provide adequate space for kindergarten programs as mandated by the Education Reform Act of 1982. It is the purpose of Sections 37-7-351 through 37-7-359 to provide the boards of trustees of the school districts of this state with additional options with which to provide for facilities, equipment and other property necessary, in the judgment of the boards of trustees of such school districts, to properly carry out the local education needs of the local school districts.

**HISTORY: Laws, 1986, ch. 415, § 2, eff from and after passage (approved March 31, 1986).**

**Editor's Notes —** The Education Reform Act of 1982, referred to in this section, is Laws of 1982, 1st Ex. Sess., ch. 17. For a complete list of code sections affected by Laws of 1982, 1st Ex. Sess., ch. 17, see the Statutory Tables Volume, Table B, Allocation of Acts.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 44, 65 et seq., 92, 94, 95.

**CJS.**
78 C.J.S., Schools and School Districts §§ 8-13, 733 et seq.

## § 37-7-355. Authority to transfer or permit use of property for school district purposes.

(1) Any school district by resolution of the school board is hereby empowered, without public or competitive bidding, to sell, lease, lend, grant or convey to a corporation, individual or partnership pursuant to Sections 37-7-351 through 37-7-359 or to permit such corporation, individual or partnership to use, maintain or operate as part of any public school facility, any real or personal property which may be necessary, useful or convenient for the purposes of the school district. Any such conveyances may include sale-leaseback or lease-leaseback arrangements, without the necessity of complying with the requirements of Article 9 of Chapter 7 of Title 37, Mississippi Code of 1972, or any other general laws which might be applicable thereto, with regard to disposal of surplus property. Any such sale, lease, loan, grant, conveyance or permit may be made or given with or without consideration and for a period of time not to exceed twenty (20) years for agreements entered into under any agreement and on any terms and conditions which may be approved by such school district. Provided, however, that any such sale, lease, loan, grant, conveyance or permit executed under authority of this section shall provide that title to any real property transferred by a local school district shall revert to the school district at the expiration of the term.

(2) The resolution adopted by the school board or governing authority shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board or governing authority is to take final action upon the question of sale, lease, loan, grant or conveyance to an authority. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board or governing authority may, in its discretion, at

said meeting, by resolution spread upon its minutes, give final approval to such sale, lease, loan, grant or conveyance. If at any time prior to such meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board or governing authority requesting that an election be called on the question, then the school board or governing authority shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing such sale, lease, loan, grant or conveyance to an authority. Such election shall be called and held, and notice thereof shall be given, in the same manner as for elections upon the question of issuing bonds of school districts, and the results thereof shall be certified to the school board or governing authority. If at least three-fifths (3⁄5) of the qualified electors of the school district who voted in such election shall vote in favor of authorizing said action, then the school board or governing authority shall proceed to sell, lease, lend, grant or convey such property as prayed for in the original resolution of the school board or governing authority; however, unless at least three-fifths (3⁄5) of the qualified electors voting in an election vote in favor of such action, then no sale, lease, loan, grant or conveyance shall be made.

**HISTORY: Laws, 1986, ch. 415, § 4, eff from and after passage (approved March 31, 1986).**

**Editor's Notes —** As enacted by Laws of 1986, ch. 415, § 4, the second sentence of this section contained a reference to "Article 9 of Title 37, Mississippi Code of 1972." .By direction of the Revisor of Statutes, the second sentence has been changed to read "Article 9 of Chapter 7 of Title 37, Mississippi Code of 1972."

**Cross References —** Acquisition and disposition of school school district property, see § 37-7-401 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

After entering into a sale-leaseback arrangement pursuant to this section, the board of trustees of a county school district may lawfully amend the arrangement, subject to the agreement of the owner/lesser, for the sole purpose of effecting a decrease in the lease monies to be paid by the school district without advertising pursuant to subsection (2) of this section. Zachary, June 18, 1999, A.G. Op. #99-0282.

## RESEARCH REFERENCES

**ALR.**

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 44, 65 et seq., 92, 94, 95.

**CJS.**

78 C.J.S., Schools and School Districts §§ 8-13, 733 et seq.

## § 37-7-357. Relationship of provisions with other laws.

Sections 37-7-351 through 37-7-359 are intended to be and shall be construed as being supplemental to all existing laws covering the acquisition, use and maintenance of school buildings by school districts. It is further provided that, as to school buildings constructed or leased pursuant to the provisions of Sections 37-7-351 through 37-7-359, it shall not be necessary to comply with the provisions of other laws concerning acquisition, use and maintenance of school buildings by school districts except as herein specifically required.

**HISTORY: Laws, 1986, ch. 415, § 5, eff from and after passage (approved March 31, 1986).**

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 44, 65 et seq., 92, 94, 95.

**CJS.**
78 C.J.S., Schools and School Districts §§ 8-13, 733 et seq.

## § 37-7-359. Appropriations for lease rentals; tax levies.

Any school district which shall execute a lease rental contract under the provisions of Section 37-7-301(v) after June 30, 1987 or in connection with a sale-leaseback or lease-leaseback arrangement authorized under the provisions of Section 37-7-355 shall annually appropriate sufficient monies to pay the lease rentals stipulated to be paid by such school district in the lease contract and/or lease purchase agreement, which lease contract and/or lease-purchase agreement shall constitute a general obligation of the school district. Any lease contracts entered into under the authority granted by Section 37-7-301(v) or 37-7-351 through 37-7-359 shall not be considered bonded indebtedness for purposes of the limitations of indebtedness contained in Sections 37-59-5 and 37-59-7 and shall not be subject to such limitations. Any millage being initially levied on or before July 1, 1991, to fund leases under this section shall remain in force until such time as the lease term has expired and the school district has fulfilled all of its obligations thereafter.

**HISTORY: Laws, 1986, ch. 415, § 6; Laws, 1986, ch. 503; Laws, 1987, ch. 307, § 44; Laws, 1995, ch. 440, § 2, eff from and after passage (approved March 21, 1995).**

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 44, 65 et seq., 92, 94, 95.

**CJS.**
78 C.J.S., Schools and School Districts §§ 8-13, 733 et seq.

# ARTICLE 9.

# ACQUISITION AND DISPOSITION OF DISTRICT PROPERTY.

In General. .......... 37-7-401
Exchange of School Property. .......... 37-7-431
Disposition of Property Not Needed for School Purposes. .......... 37-7-451
Disposition of Property Not Needed for School Purposes; Additional Method. .......... 37-7-471
Disposition of Property on Dissolution of School District. .......... 37-7-501
Disposition of Lands Acquired by Township Trustees for Schools and School Lands. .......... 37-7-531

## IN GENERAL

Sec.
37-7-401. Acquisition of land outside of district for construction of school buildings.
37-7-403. Authorization of joint construction of buildings or other facilities or operation of schools by adjoining school districts.
37-7-405. Agreement between boards of trustees as to joint construction of buildings or operation of schools.
37-7-407. Approval of agreements of boards of trustees as to joint construction of buildings or operation of schools.
37-7-409. Expenditure of funds for joint construction of buildings or operation of schools; applicable laws; levy of taxes.
37-7-411. Agreement as to control over joint school operation or building; applicable laws.
37-7-413. Powers included within power to construct, erect, and equip school buildings.
37-7-415. Effect of extension of municipal corporate limits.
37-7-417. Authorization for agreements between school districts to establish regional high schools; establishment and powers of boards of trustees.
37-7-419. Authorization for appropriation and expenditure of funds for regional high schools; disbursements; evidences of indebtedness; fiscal agent, contracting party.

### § 37-7-401. Acquisition of land outside of district for construction of school buildings.

In all cases where the same shall be necessary, advantageous or desirable from the standpoint of transportation, the efficiency of operating schools, or other pertinent considerations, any school district which has been reconstituted, reorganized or created under the provisions of Article 1 of this chapter may, with the prior consent and approval of the State Board of Education, acquire land outside of the boundaries of said school district and thereon construct, erect and equip any needed school building or other school facility of such school district. Any available state public school building funds, or any available funds derived from bonds issued by the school district for such purpose, or any other funds which are available to said school district for such purpose, may be expended for the construction, erecting and equipping of such a school building or school facility, all, however, subject to the prior consent and approval of the State Board of Education. Any school building or school facility so constructed outside of the boundaries of the school district owning same shall be operated, managed and supervised by the school board of the school district owning same in the same manner as though the building or facility were located within the school district, and all the laws of this state concerning the operation of schools shall be fully applicable thereto, and the school board shall have the power to specify the grades which shall be taught therein.

**HISTORY: Codes, 1942, § 6328-71; Laws, 1956, ch. 266, § 1; Laws, 1986, ch. 492, § 23, eff from and after July 1, 1987.**

**Editor's Notes —** Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987.

For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Regional vocational education centers, see § 37-31-71 et seq.

State aid for construction of school facilities see § 37-47-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 44, 92, 94, 95.

16A Am. Jur. Legal Forms 2d (Rev), Schools §§ 229:102 et seq. (Acquisition and disposition of school property).

**CJS.**

78A C.J.S., Schools and School Districts §§ 757-760.

## § 37-7-403. Authorization of joint construction of buildings or other facilities or operation of schools by adjoining school districts.

In addition to the power and authority conferred by Section 37-7-401, two or more adjoining school districts which have been reconstituted, reorganized or created under Article 1 of this chapter may join, unite and cooperate in the construction, erecting and equipping of a school building or other school facility situated within the boundaries of either or any of the cooperating districts which is to be used jointly by the school districts uniting and joining in the construction, erecting and equipping thereof. In addition thereto, any two or more such school districts may, by appropriate written agreement join and unite in the joint operation of one or more schools, school buildings or other school facilities which have been or may be constructed, erected or equipped wholly by one of such districts. No school districts, however, shall join, unite or cooperate in the construction, erecting and equipping or contract for the joint operation of a school or joint school building unless the proposal so to do shall first be submitted to and approved by the state educational finance commission.

**HISTORY: Codes, 1942, § 6328-72; Laws, 1956, ch. 266, § 2, 1960, ch. 301, § 1.**

**Editor's Notes** — Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987.

For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

Section 37-45-3 provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

**Cross References** — Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Regional vocational education centers, see § 37-31-71 et seq.

State aid for construction of school facilities see § 37-47-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 99.

16A Am. Jur. Legal Forms 2d (Rev), Schools § 229:20 (contract for establishment for joint school system by two school districts).

**CJS.**

78A C.J.S., Schools and School Districts § 772.

## § 37-7-405. Agreement between boards of trustees as to joint construction of buildings or operation of schools.

When any two (2) or more adjoining school districts shall desire and propose to join, unite and cooperate in the construction, erecting and equipping of a joint school building or for the joint operation of a school or other school facility which has been or may be constructed, erected or equipped wholly by one of such districts, as authorized by Section 37-7-403, the school boards of all school districts concerned shall enter into an appropriate agreement as to the location and site of said school building, the manner of providing funds to defray the operating expenses thereof, the grades to be taught therein, the proportion or amount of funds for the construction, erecting and equipping of said school building to be paid or contributed by each district, the proportionate ownership of such building by each district, and all other material and pertinent considerations. In the event the school building or facility involved has been or is to be constructed, erected and equipped entirely by one of such districts, acting alone, the contract may provide that the entire ownership of the building and equipment therein shall be in the school district so constructing, erecting and equipping same.

**HISTORY: Codes, 1942, § 6328-73; Laws, 1956, ch. 266, § 3; Laws, 1960, ch. 301, § 2; Laws, 1986, ch. 492, § 24, eff from and after July 1, 1987.**

**Cross References** — Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see

§ 37-7-355.

State aid for construction of school facilities, see § 37-47-1 et seq.

## § 37-7-407. Approval of agreements of boards of trustees as to joint construction of buildings or operation of schools.

Such contract or agreement provided for in Section 37-7-405, shall be transmitted to the state educational finance commission which shall consider and pass upon same from the standpoint of whether or not same will promote the welfare of the school districts involved and the efficiency of the operation of the schools thereof. If said agreement shall be approved by the said state educational finance commission, then the school districts involved shall be authorized to proceed as set forth in said agreement. If, however, the state educational finance commission shall disapprove said agreement then the school districts involved shall not be authorized to proceed thereunder. Any such agreement, with the prior consent and approval of the state educational finance commission, may be altered or amended from time to time as circumstances require.

**HISTORY: Codes, 1942, § 6328-73; Laws, 1956, ch. 266, § 3; Laws, 1960, ch. 301, § 2.**

**Editor's Notes —** Section 37-45-3 provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

State aid for construction of school facilities, see § 37-47-1 et seq.

## § 37-7-409. Expenditure of funds for joint construction of buildings or operation of schools; applicable laws; levy of taxes.

(1) When any school districts shall be authorized to unite, join and cooperate in the construction, erecting and equipping of a joint school building or school facility or in the joint operation of a school erected, constructed and equipped entirely by one of such districts, any school district so authorized may, with the prior consent and approval of the State Board of Education, expend in the construction, erecting and equipping of such joint school building or the school building which is to be jointly operated any available state public school building funds, or any available funds derived from bonds issued by such school district for such purpose, or any other funds which are otherwise available to such school district for such purpose, as is set forth and stipulated in the agreement entered into between the school districts involved. Except as is herein specifically provided all provisions of law relative to the construction, erecting and equipping of school buildings, the acquisition of land therefor, and

the expenditure of funds for such purposes, shall be fully applicable to any joint school building which has been or is to be constructed, erected and equipped or which is to be operated jointly pursuant to an agreement entered into under the provisions of Section 37-7-405.

(2) When a contract is made and entered into for the construction, erecting and equipping of joint school facilities or the joint operation of school facilities erected, constructed and equipped entirely by one of such districts, as provided in Section 37-7-405, and where such contract has been approved by the State Board of Education, then any funds which are available for the lawful operating and incidental expenses of a school district may be expended by such school district as provided and stipulated in the agreement entered into between the school districts involved (including, but not limited to, funds for payment of tuition, funds payable as a rental upon the use of the building and equipment, and funds for maintenance and incidental costs of operation). The levying authority for the school district, as defined in Section 37-57-1, upon receipt of a certified copy of an order adopted by the school board of the school district in the county requesting same, shall at the same time and in the same manner as other ad valorem taxes are levied, levy an annual tax in the amount fixed in such order as may be required to meet any monetary obligation incurred under such contract. Notwithstanding any statute to the contrary, such number of mills as is necessary to defray any such contractual obligation shall be levied. However, this provision shall in no way be construed to increase the number of mills now reimbursable under the homestead exemption laws of the State of Mississippi.

(3) Before levying any taxes under the provisions of this section, which levy would exceed the limitations otherwise provided for school purposes, the levying authority for the school district, as defined in Section 37-57-1, shall adopt a resolution declaring its intention so to do, stating the amount of millage to be levied and the purpose for which the proceeds are to be used, and the date upon which it proposes to make such levy. Such resolution shall be published once a week for not less than three (3) consecutive weeks, in at least one (1) newspaper having general circulation in the school district. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the levying of taxes, and the last publication shall be made not more than seven (7) days prior to such date. If within fifteen (15) days after the final publication of said resolution, a petition signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the qualified electors of said school district, requesting an election on the proposition of levying such additional taxes for school purposes is filed with the clerk of the board of supervisors or the clerk of the municipality, as the case may be, such levy shall not be made until an election shall be held to determine whether or not three-fifths (3⁄5) of qualified electors of said school district shall favor the additional levy for school purposes. If three-fifths (3⁄5) of the qualified electors of said school district voting in such election approves the levying of the additional taxes, then the levy shall be made within the manner, form and time as required by law. If no such petition is filed with the clerk as herein

provided, then said levy shall be made by the levying authority in the manner, form and time as required by law. If any election is held under the provisions of this section, said election shall be under the supervision of the county or municipal election commission, as the case may be, in the manner, form and time as required by law for conducting general elections in this state.

**HISTORY: Codes, 1942, § 6328-74; Laws, 1956, ch. 266, § 4; Laws, 1960, ch. 301, § 3; Laws, 1968, ch. 386; Laws, 1986, ch. 492, § 25, eff from and after July 1, 1987.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (3). The word "muncipality" was changed to "municipality." The Joint Committee ratified the correction at its December 3, 1996 meeting, and the section has been reprinted in the supplement to reflect the corrected language.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Regional vocational education centers, see § 37-31-71 et seq.

State aid for construction of school facilities, see § 37-47-1 et seq.

## § 37-7-411. Agreement as to control over joint school operation or building; applicable laws.

Subject to the prior consent and approval of the State Board of Education, the school boards of all school districts involved shall be authorized to agree as to which of the school boards shall have the power to operate, manage, govern and control any joint school or school building, constructed, erected and equipped or which is to be operated jointly under the provisions of Section 37-7-403, or, in the alternative, such boards may agree that all of such boards, acting jointly, or a joint board established and constituted in such manner as shall be agreed upon, shall have the power to operate, manage, govern and control any such school or school building. The board so agreed upon and constituted shall have the full power and authority to govern, supervise, manage and control such joint school building in the same manner and to the same extent as though said school was a regular school of such school district. All pertinent provisions of the school laws of this state shall be fully applicable to joint schools established, constructed, erected and equipped or which are to be jointly operated under the provisions of Section 37-7-403, except that the eligible children of all school districts joining and cooperating in the establishment and/or operation of such joint school who are assigned to such school by the school board of the district in which they reside shall be eligible to and shall attend such school.

**HISTORY: Codes, 1942, § 6328-75; Laws, 1956, ch. 266, § 5; Laws, 1960, ch. 301, § 4; Laws, 1986, ch. 492, § 26, eff from and after July 1, 1987.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Regional vocational education centers, see § 37-31-71 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Neither Section 37-13-92 nor Sections 37-7-411 and 37-7-413 allows creation of separate legal entities or school districts when authority was granted to establish alternative school programs or jointly operate school; only Legislature can create autonomous school district as legal entity; school districts have no such power and bring no such power to interlocal agreement; no school district participant has authority to relieve itself of responsibility for operation of alternative school program through interlocal agreement. Yoder Oct. 6, 1993, A.G. Op. #93-0685.

## § 37-7-413. Powers included within power to construct, erect, and equip school buildings.

The power granted to any school district to construct, erect and equip school buildings under any of the provisions of Sections 37-7-401 through 37-7-411 shall include also the power to acquire by purchase, donation or otherwise existing buildings, and the power to enlarge, make additions to, renovate and remodel existing buildings. School districts may issue bonds or other evidence of debt in the manner and subject to the limitations otherwise provided by law for constructing, erecting, equipping, acquiring, enlarging, making additions to, renovating and remodeling school buildings under the provisions of said sections.

**HISTORY: Codes, 1942, § 6328-76; Laws, 1956, ch. 266, § 6.**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

State aid for construction of school facilities, see § 37-47-1 et seq.

Roads, driveways and parking areas on school district property, and expenditure of funds for their construction and upkeep, see § 65-7-74.

### OPINIONS OF THE ATTORNEY GENERAL

Neither Section 37-13-92 nor Sections 37-7-411 and 37-7-413 allows creation of separate legal entities or school districts when authority was granted to establish alternative school programs or jointly operate school; only Legislature can create autonomous school district as legal entity; school districts have no such power and bring no such power to interlocal agreement; no school district participant has authority to relieve itself of responsibility for operation of alternative school program through interlocal agreement. Yoder Oct. 6, 1993, A.G. Op. #93-0685. 1993, A.G. Op. #93-0709.

Where the cost for a field house donated to a school district was secured, in part, by a personal note executed by private citizens, no statutory authority would empower the district to assume and pay the debt, even though it was incurred for the benefit of the district. Reed, Mar. 18, 2005, A.G. Op. 05-0108.

## § 37-7-415. Effect of extension of municipal corporate limits.

Notwithstanding the provisions of Section 37-7-611, or the provisions of any other applicable statute, the extension of the corporate limits of a municipality so as to include a school building constructed or operated under the provisions of Sections 37-7-403 through 37-7-411, which was theretofore outside of said corporate limits, shall not affect the ownership of the school building or buildings involved or the land on which it is located or any school facilities connected therewith. All such buildings and other property shall, notwithstanding the extension of said corporate limits, remain the property of the school district or districts theretofore owning same, and the provisions of said Section 37-7-611, shall be wholly inapplicable except that the territory which is included within the corporate limits of the municipality as a result of the extension of such limits, other than the said school building or buildings, the land on which it or they are located, or any school facilities connected therewith referred to above, shall become a part of the municipal separate school district, if there be such a municipal separate school district, and the territory not so included within the corporate limits of the municipality shall remain within the school district of which it was a part at the time of such extension of the corporate limits. If the land on which such school building and other school facilities are situated is sixteenth section land, the ownership of said buildings and other property shall likewise not be affected by the extension of the corporate limits of the municipality except as is herein expressly provided.

**HISTORY: Codes, 1942, § 6328-76.5; Laws, 1960, ch. 301, § 5.**

**Editor's Notes —** Section 37-7-611, which is referred to in this section, was repealed by Laws of 1986, ch. 492, § 47, effective from and after July 1, 1987.

**Cross References —** Extension or contraction of municipal corporate boundaries, see §§ 21-1-27 through 21-1-41.

Abolition, reorganization or alteration of school district by school board, see §§ 37-7-103 through 37-7-115.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### JUDICIAL DECISIONS

**1. In general.**

The legislature has recognized that municipal school districts may be affected by the extension of city boundaries. In re Extension of Boundaries of Gulfport, 253 Miss. 738, 179 So. 2d 3, 1965 Miss. LEXIS 1041 (Miss. 1965).

## § 37-7-417. Authorization for agreements between school districts to establish regional high schools; establishment and powers of boards of trustees.

The various school districts of this state are authorized to enter into agreements between such school districts providing for the construction or operation of regional high school centers. Any such agreement shall be subject to the approval of the State Board of Education. Any such agreement may, among other provisions, provide for the method of financing the construction and operation of such facilities, the manner in which such facilities are to be controlled, operated and staffed, and the basis upon which students are to be admitted thereto and transportation provided for students in attendance therein. Any such agreement or any subsequent modification thereof shall be spread at large upon the minutes of each party thereto after having been duly adopted by the school board of each school district.

Such agreements may provide for the establishment of boards of trustees of such high school centers to be made up of representatives of the school boards of the school districts which may be parties thereto. Said school boards of the school districts to such agreement may delegate any and all powers of said trustees as may be necessary or desirable for the operation of any such regional high schools to the board of trustees of any such center so created, except for the power to request or require the levy of taxes or the power to issue or require the issuance of any bonds, notes or other evidences of indebtedness, or to call for an election on the question of the issuance thereof.

**HISTORY: Laws, 1993, ch. 369, § 1, eff from and after July 1, 1993.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

State aid for construction of school facilities, see § 37-47-1 et seq.

School bonds and obligations generally, see § 37-59-1 et seq.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 53 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 101-106.

## § 37-7-419. Authorization for appropriation and expenditure of funds for regional high schools; disbursements; evidences of indebtedness; fiscal agent, contracting party.

The various school districts which may become parties to any such agreement are authorized to appropriate and expend for the purposes thereof any and all funds which may be required to carry out the terms of any such agreement from any funds available to any such party to such an agreement not otherwise appropriated without limitation as to the source of such funds, including minimum foundation program funds, sixteenth section funds, funds received from the federal government or other sources by way of grant, donation or otherwise, and funds which may be available to any such party through the State Department of Education or any other agency of the state, regardless of the party to such agreement designated thereby to be primarily responsible for the construction or operation of any such regional high school center and regardless of the limitation on the expenditure of any such funds imposed by any other statute. However, no such funds whose use was originally limited to the construction of capital improvements shall be utilized for the purpose of defraying the administrative or operating costs of any such center. Any one or more of the parties to such an agreement may be designated as the fiscal agent or contracting party in carrying out any of the purposes of such agreement, and any and all funds authorized to be spent therefor by any of the said parties may be paid over to the fiscal agent or contracting party for disbursement by such fiscal agent or contracting party. Such disbursements shall be made and contracted for under the laws and regulations applicable to such fiscal or disbursing agent. All of the school district parties to any such agreement may issue bonds, negotiable notes or other evidences of indebtedness for the purpose of providing funds for the acquisition of land and for the construction of buildings and permanent improvements under the terms of any such agreement under any existing laws authorizing the issuance or sale thereof to provide funds for any capital improvement.

**HISTORY: Laws, 1993, ch. 369, § 2, eff from and after July 1, 1993.**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

State aid for construction of school facilities, see § 37-47-1 et seq.

School bonds and obligations, generally, see § 37-59-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 120, 122.

**CJS.**

78 C.J.S., Schools and School Districts §§ 101-106.

## EXCHANGE OF SCHOOL PROPERTY

Sec.

37-7-431. Authorization of acquisition and disposition of school property by exchanges; exchanges subject to approval of chancery court; hearing.

37-7-433. Execution of conveyance of school property by president and secretary of board.

37-7-435. Conveyance of exchanged lands to school board members.

37-7-437. Relationship of provisions with other laws.

### § 37-7-431. Authorization of acquisition and disposition of school property by exchanges; exchanges subject to approval of chancery court; hearing.

Whenever the school board of any school district shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes, (a) that it shall need other lands located within the school district for school purposes, (b) that the district owns lands of equal value to such needed lands which could be exchanged for such needed lands, (c) that the value of the two (2) tracts is equal according to qualified appraisals, and (d) that the owners of the other lands are agreeable to such exchange, the school board of such school district shall be authorized and empowered, in its discretion, to negotiate a trade of lands upon such terms and conditions as the school board may, in its discretion, deem proper in consideration of the needs of the district and of the benefits which will inure to the said school district.

Any such trade of lands shall be subject to approval by the chancery court of the county in which the school lands lie. Notice of the hearing before the chancery court shall be published in a newspaper of general circulation in the school district for three (3) consecutive weeks, the first notice to be at least thirty (30) days prior to the hearing.

**HISTORY: Codes, 1942, § 6328-121; Laws, 1966, Ex Sess, ch. 30, § 1; Laws, 1977, ch. 359; Laws, 1986, ch. 492, § 27; Laws, 1989, ch. 550, § 1; Laws, 2000, ch. 370, § 3, eff from and after July 1, 2000.**

**Cross References** — Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 44, 92, 94, 95.

16A Am. Jur. Legal Forms 2d (Rev), Schools §§ 229:102 et seq. (acquisition and disposition of school property).

**CJS.**

78A C.J.S., Schools and School District §§ 733 et seq.

## § 37-7-433. Execution of conveyance of school property by president and secretary of board.

Upon being authorized by a resolution of the school board as is provided by Section 37-7-431, the president and secretary shall be authorized and empowered to execute, for and on behalf of the school district, a conveyance of the school property for the purposes, upon the terms and conditions provided and specified by the school board, and for the consideration of the execution of a deed to the lands exchanged. It shall not be necessary or requisite that competitive bids be advertised for or received in connection with such exchange of property.

**HISTORY: Codes, 1942, § 6328-122; Laws, 1966, Ex Sess, ch. 30, § 2; Laws, 1986, ch. 492, § 28; Laws, 1989, ch. 550, § 2; Laws, 2000, ch. 370, § 1, eff from and after July 1, 2000.**

**Cross References** — Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### § 37-7-435. Conveyance of exchanged lands to school board members.

The lands shall be conveyed by warranty deed to the school board members or their successors in office of the school district. Said lands shall be conveyed by fee simple absolute.

**HISTORY: Codes, 1942, § 6328-123; Laws, 1966, Ex Sess, ch. 30, § 3; Laws, 1986, ch. 492, § 29; Laws, 1989, ch. 550, § 3; Laws, 2000, ch. 370, § 2, eff from and after July 1, 2000.**

**Cross References** — Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### § 37-7-437. Relationship of provisions with other laws.

It is the intent of the legislature that Sections 37-7-431 through 37-7-435 shall authorize a new and different method of disposing of school lands in exchange for lands of equal value and shall not be construed to be in conflict with Sections 37-7-451 through 37-7-457, Sections 37-7-471 through 37-7-483, or Sections 37-7-501 through 37-7-511, which deal with sales of school property no longer needed for school purposes.

**HISTORY: Codes, 1942, § 6328-124; Laws, 1966, Ex Sess, ch. 30, § 4, eff from and after passage (approved December 30, 1966).**

**Cross References** — Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

## DISPOSITION OF PROPERTY NOT NEEDED FOR SCHOOL PURPOSES

Sec.
37-7-451. Authorization of sale of property not used for school purposes.
37-7-453. Repealed.
37-7-455. Advertising of sale; conduct of sale; execution of conveyance; reservation of certain interests; disposal of personal property.
37-7-457. All sales to be for cash; disposition of proceeds of sale.
37-7-459. Sale of computers, peripheral equipment and adaptive devices to certain students; qualifications of students; disposition of proceeds.

### § 37-7-451. Authorization of sale of property not used for school purposes.

When any school district shall own any land, buildings or other property that is not used for school or related school purposes and not needed in the operation of the schools of the district, the school board of such school district may sell and convey such land, buildings or other property in the manner provided in Sections 37-7-453 through 37-7-457.

**HISTORY: Codes, 1942, § 6328-41; Laws, 1953, Ex Sess, ch. 28, § 1; Laws, 1960, ch. 305; Laws, 1986, ch. 492, § 30, eff from and after July 1, 1987.**

**Editor's Notes —** Section 37-7-453 referred to in this section was repealed by Laws of 1993, ch. 607, § 1, effective from and after April 15, 1994.

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Provisions authorizing sales of property belonging to agricultural high school which is not used for school purposes, see § 37-27-43.

Provisions authorizing sales of property belonging to junior college which is not used for school purposes, see § 37-29-75.

Execution of quitclaim deeds and disclaimers of title by school district boards of trustees where questions of title have arisen with reference to sale procedure or the like, see § 89-1-25.

## JUDICIAL DECISIONS

**1. In general.**

Deeds executed by the trustees of a school district which has been merged with another, of school house property, are ineffective. McInnis v. Board of Education, 242 Miss. 412, 135 So. 2d 180, 1961 Miss. LEXIS 577 (Miss. 1961).

## OPINIONS OF THE ATTORNEY GENERAL

To deed property donated for use as, but no longer used as, school back to widows of donors with no consideration would conflict with Section 66 of Mississippi Constitution regarding granting of donation or gratuity; school district must advertise property for sale upon competitive bids. Young, Nov. 4, 1992, A.G. Op. #92-0822.

Sections 37-7-451 et seq. and 37-7-471 et seq. set forth the methods by which a school district may dispose of property which is not needed for school purposes. The Department of Archives and History may acquire the property upon making a determination that it is significant for historical, architectural, archaeological or cultural reasons pursuant to Section 39-5-5(d). Hilliard, April 27, 1995, A.G. Op. #95-0012.

There exists ample authority for a school district to convey real property; however, such a sale requires a finding that the real property is not used for school or related purposes and is not needed in the operation of the schools of the district. Sanders, Feb. 11, 2000, A.G. Op. #2000-0050.

A school district could make a direct sale of property to the General Services Administration for use as a United States District Courthouse pursuant to Section 3-5-1, and was not required to follow the procedures and provisions of Sections 37-7-451 et seq. and 37-7-471 et seq. so long as fair market value was obtained for the property. Dukes, March 31, 2000, A.G. Op. #2000-0171.

A school board may not sell property without a reverter clause, unless the sale is done according to the bidding process set forth in §§ 37-7-451 through 37-7-457. Jones, Apr. 29, 2004, A.G. Op. 04-0164.

## RESEARCH REFERENCES

**CJS.**

78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761, 763, 775, 776.

## § 37-7-453. Repealed.

Repealed by Laws, 1993, ch. 607, § 1, eff from and after April 15, 1994.

[Codes, 1942, § 6328-42; Laws, 1953, Ex Sess, ch. 28, § 2; Laws, 1986, ch. 492, § 31; Laws, 1993, ch. 607, § 1]

**Editor's Notes** — Former § 37-7-453 provided for procedures for sale of property.

## § 37-7-455. Advertising of sale; conduct of sale; execution of conveyance; reservation of certain interests; disposal of personal property.

(1) Any land, buildings or other property that is not used for school purposes and which is not needed in the operation of the schools of the district may be sold in the manner established in this section but only after each charter school located in the school district has notified the school board that it is not exercising its right of first refusal on the property, as provided under Section 37-28-61. Except as otherwise provided in subsections (2) and (3) of this section, all such land, buildings or other property shall be sold only after the receipt of sealed bids therefor after the time and place of making such sale has been duly advertised in some newspaper having a general circulation in the county in which the property is located once each week for three (3) consecutive weeks with the first publication to be made not less than fifteen (15) days prior to the date upon which such bids are to be received and opened. The property shall be sold to the highest and best bidder for cash, but the school board shall have the right to reject any and all bids. If the property is not sold pursuant to such advertisement, the school board, by resolution, may set a date for an open meeting of the school board to be held within sixty (60) days after the date upon which the bids were opened. At the meeting held pursuant to such resolution, the school board may sell by auction the property for a consideration not less than the highest sealed bid previously received pursuant to the advertisement. At the meeting, any interested party may bid for cash, and the property shall be sold to the highest and best bidder for cash, but the school board shall have the right to reject any and all bids. The school board may require a written confirmation of bids received at such called meeting before selling the property at auction, but it shall not be necessary that sealed bids be received before conducting the auction.

(2) As an alternative to the procedures established under subsection (1) of this section, the school board of a school district may elect, in its discretion, to sell by public auction any property, other than real property or buildings of the school district, which is not used for school or related school purposes and not needed in the operation of the schools, according to the procedure in Section 17-25-25, except as otherwise provided under Section 37-7-459.

(3) As an alternative to the procedures established under subsection (1) or (2) of this section, the county board of education of a county having a population in excess of ten thousand (10,000) according to the 2000 decennial census and in which U.S. Highway 45 intersects with Mississippi Highway 16,

may elect, in its discretion, to transfer and sell the buildings of the school district and the real property upon which the buildings are located which are not used as school facilities or for school-related purposes and not needed in the operation of the schools, after advertising for and receiving competitive bids for the sale of such property. If any bid is offered by a nonprofit 501(c) (3) entity which has made substantial improvements to the buildings, the fair market value of the improvements shall be deemed to be consideration for, a part of, the bid offered by the entity. In this case, the school board shall enter a finding on its minutes that the nonprofit entity has made substantial improvements to the property and the property is no longer needed for school district purposes.

(4) When the sale of such property is authorized and approved by the school board, the president of the school board shall be authorized and empowered to execute a conveyance of the property upon the terms and for the consideration fixed by the board. The school board shall reserve unto the district all oil, gas and minerals in, on or under the land, and all proceeds derived from royalties upon the reserved mineral interests shall be used as provided by Section 37-7-457.

**HISTORY: Codes, 1942, § 6328-43; Laws, 1953, Ex Sess, ch. 28, § 3; Laws, 1986, ch. 492, § 32; Laws, 2000, ch. 481, § 2; Laws, 2000, ch. 593, § 10; Laws, 2010, ch. 534, § 1; Laws, 2012, ch. 499, § 4; Laws, 2013, ch. 497, § 50; Laws, 2015, ch. 339, § 2, eff from and after July 1, 2015.**

**Joint Legislative Committee Note —** Section 2 of ch. 481, Laws of 2000, effective from and after its passage (approved April 25, 2000), amended this section. Section 10 of ch. 593, Laws of 2000, effective from and after its passage (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of Section 10 of ch. 593, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

## JUDICIAL DECISIONS

**1. In general.**

Miss. Code Ann. ch. II, tit. 37, and Miss. Code Ann. §§ 37-7-471 through 37-7-483, do not apply to sixteenth section lands. The only reasonable interpretation of the statutes under said chapter is that they apply to property to which the school district actually holds title; school districts do not hold title to sixteenth section lands and title resides in the State. Clark v. Stephen D. Lee Found., 887 So. 2d 798, 2004 Miss. LEXIS 1413 (Miss. 2004).

## OPINIONS OF THE ATTORNEY GENERAL

An appraisal is but an opinion and not necessarily conclusive. Therefore if, in its discretion, the school board, considering all relevant factors, finds on its minutes consistent with fact that a bid received following advertisement or a bid received at auction under Section 37-7-455 represents fair market value, then the board may make such an award. Van Slyke, April 7, 1995, A.G. Op. #95-0186.

Provided the mandates of § 37-7-451 et seq. are met and a city is the successful bidder on an elementary school, the school district and the city can enter an appropriate interlocal agreement for the sale of the property and lease-back by the school district upon a finding spread across their respective minutes. Adams, July 18, 2002, A.G. Op. #02-0368.

Where a city acquired property from a school district pursuant to Section 37-7-471, it may not sell the property directly to an individual, but must comply with the procedure as outlined in Sections 37-7-479 and 37-7-455. Treadway, Feb. 2, 2006, A.G. Op. 05-0061.

## § 37-7-457. All sales to be for cash; disposition of proceeds of sale.

All conveyances of property under the authority of Section 37-7-455 shall be for a cash consideration. The proceeds of such sale shall be placed in the maintenance fund of the school district. However, if any sale embraces realty, and the school district selling same owes outstanding bonds or notes, then in that event the proceeds of such sale shall be placed to the credit of the bond and interest sinking fund of such school district, or used to construct, renovate or purchase, under provisions elsewhere provided by law, similar type property or property of comparable value at attendance centers to be used for the same or other reasonably necessary purposes.

**HISTORY: Codes, 1942, § 6328-44; Laws, 1953, Ex Sess, ch. 28, § 4; Laws, 1964, ch. 392; Laws, 1973, ch. 311, § 1, eff from and after passage (approved March 2, 1973).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### OPINIONS OF THE ATTORNEY GENERAL

A school district that sells surplus real property and has outstanding bonds and notes may use the proceeds of the sale of surplus real property for erecting, renovating, and equipping schools and related facilities and for the purchase of land therefor. Wallace, Dec. 3, 1999, A.G. Op. #99-0640.

Proceeds of the sale of surplus real property may not be used for personnel expenses. Wallace, Dec. 3, 1999, A.G. Op. #99-0640.

Proceeds of the sale of surplus property that are to be used for construction, renovation, or purchase of property need not be be placed in any specialized fund or account. Wallace, Dec. 3, 1999, A.G. Op. #99-0640.

A school district may use the proceeds from the sale of a land site, determined by the school board to be surplus land, to the credit of a bond and interest sinking fund or for school construction. Stewaart, Oct. 31, 2003, A.G. Op. 03-0460.

## § 37-7-459. Sale of computers, peripheral equipment and adaptive devices to certain students; qualifications of students; disposition of proceeds.

(1) Upon a resolution duly adopted by a majority of its members, the

board of trustees of local public school districts may adopt a policy authorizing the sale of computers, peripheral equipment and adaptive devices to students to whom such devices and equipment have been issued during the course of an academic school year. However, the sale of computers by a public school district shall be limited to those students enrolled in Grade 12, who are in possession of a district-issued computer device or equipment, and who have satisfied all the requirements for graduation, as established by the school district. Students meeting the criteria established in this paragraph who verify to the school of enrollment before graduation an official document of acceptance to any Mississippi two-year or four-year college or university, whether public or private, shall be required to pay One Dollar ($1.00) for the cost of the district-issued computer device or peripheral equipment or adaptive device. Students meeting the requirements of this section who cannot sufficiently verify acceptance to a Mississippi two-year or four-year college or university shall be required to pay Seventy-five Dollars ($75.00) for the cost of the district-issued computer device or peripheral equipment. Verification of college acceptance must be submitted before the deadline for finalizing graduation eligibility established by each school district adopting a policy authorizing the sale of such devices to students.

(2) All sales shall be final and without warranty of merchantability, given the prior and extended use of the computer, equipment or adaptive device by the purchasing student. All proceeds received from the sale of property authorized under paragraph (1) of this section shall be deposited into the school maintenance fund as provided under Section 37-7-457.

(3) For purposes of this section the term “school board” also means the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. As used in this section, the term “school of enrollment” also means a charter school.

**HISTORY: Laws, 2015, ch. 339, § 1, eff from and after July 1, 2015.**

## DISPOSITION OF PROPERTY NOT NEEDED FOR SCHOOL PURPOSES; ADDITIONAL METHOD

| Sec. | |
|---|---|
| 37-7-471. | Authorization of sale, lease, etc., of property not used for school purposes; terms, conditions and consideration of sale. |
| 37-7-473. | Persons to whom property may be disposed; authorized uses. |
| 37-7-475. | Execution of conveyance or lease by president and secretary of board. |
| 37-7-477. | Reverter provisions in instrument disposing of property where board retains no interest; section not applicable to acquisition by United States of school or other real property possessed by state. |
| 37-7-479. | Conditions under which disposed of property may later be sold; disposition of proceeds of sale. |
| 37-7-481. | School boards empowered to exercise authority conferred. |
| 37-7-483. | Declaration of legislative intent; relationship of provisions with other laws. |

Sec.
37-7-485. School Property Development Act; optional method of disposal of surplus school property to generate greater revenue than public sale; school boards authorized to sell, convey or exchange nonoperational property interest in proposed development projects; school boards authorized to contract with other entities for development, design, construction, financing, ownership and operation of surplus school property; school boards authorized to pledge revenues received under Sections 37-7-471 through 37-7-483 for repayment of notes and other obligations; sound business practices to be used; public record of final and signed contract; restrictions on persons related by consanguinity or affinity to members of school board or superintendent from having interests in project; conditions on exercise of option to enter into development agreement; certification regarding statements of economic interest; property developed to be deemed for school or educational purposes.
37-7-487. Estimation and pledge of revenues by school districts; "revenues" defined; authorization to enter into development agreements.

## § 37-7-471. Authorization of sale, lease, etc., of property not used for school purposes; terms, conditions and consideration of sale.

Whenever the school board of any school district shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes:

(a) That any school building, land, property or other school facility is no longer needed for school or related purposes and is not to be used in the operation of the schools of the district, or that such school building, land, property or other school facility may yield a higher long-term economic value to the district, in the discretion of the local school board;

(b) That the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the school district; and

(c) That the use of the school building, land, property or other school facility for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the school board of such school district shall be authorized and empowered, in its discretion, and upon the terms and conditions set forth in Section 37-7-477, to sell, convey, lease or otherwise dispose of same for any of the purposes set forth herein. Such sale, conveyance, lease or other disposition, including retention of partial interest, or undivided interest or other ownership interest, shall be made upon such terms and conditions and for such consideration, nominal or otherwise, as the school board may, in its discretion, deem proper in consideration of the benefits which will inure to the school district or the community in which the school building, property or other facility is located by the use thereof for the purpose for which it is to be sold, conveyed, leased or otherwise disposed of. The authority conferred by Sections 37-7-471 through 37-7-483 may be exercised by a school board in the sale, conveyance or lease of relocatable classrooms to the school board of another school district. Said sections without reference to another statute shall be deemed full and complete power for the exercise of the authority conferred hereby.

**HISTORY: Codes, 1942, § 6328-103; Laws, 1958, ch. 596, § 3; Laws, 1986, ch. 492, § 33; Laws, 1990, ch. 535, § 5; Laws, 2005, ch. 540, § 3, eff from and after passage (approved Apr. 20, 2005).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Power of trustees of merged district.

**1. In general.**

Miss. Code Ann. §§ 37-7-471 through 37-7-483, do not apply to sixteenth section lands. The only reasonable interpretation of the statutes under said chapter is that they apply to property to which the school district actually holds title; school districts do not hold title to sixteenth section lands and title resides in the State. Clark v. Stephen D. Lee Found., 887 So. 2d 798, 2004 Miss. LEXIS 1413 (Miss. 2004).

School board simply had no authority to lease sixteenth section land to the foundation for $ 1.00 per year because the nominal rental was insufficient and amounted to an unconstitutional donation; the board was directed to come to a mutually beneficial resolution and create a lease with the foundation comporting with constitutional and statutory guidelines on fair terms given the non-profit, civic objectives, and means of the foundation. Clark v. Stephen D. Lee Found., 2003 Miss. LEXIS 148 (Miss. Apr. 3, 2003), op. withdrawn, sub. op., 887 So. 2d 798, 2004 Miss. LEXIS 1413 (Miss. 2004).

In view of the statutory authorization of the use of school buildings for civic and community purposes, the title to land acquired for a school building does not revert to the grantor upon the discontinuance of school uses, where the building is used as a community center and voting place. McGee v. Chickasaw County School Board, 239 Miss. 5, 120 So. 2d 778, 1960 Miss. LEXIS 260 (Miss. 1960).

**2. Power of trustees of merged district.**

Deeds executed by the trustees of a school district which has been merged with another, of school house property, are ineffective. McInnis v. Board of Education, 242 Miss. 412, 135 So. 2d 180, 1961 Miss. LEXIS 577 (Miss. 1961).

## OPINIONS OF THE ATTORNEY GENERAL

County Board of Education may sell, lease, convey or otherwise dispose of school building in question for such consideration, nominal or otherwise, and such terms and conditions as would confer benefits to either school district or community, if school board first finds that requirements set forth in Section 37-7-471 have been met. Young, July 22, 1992, A.G. Op. #92-0535.

Sections 37-7-451 et seq. and 37-7-471 et seq. set forth the methods by which a school district may dispose of property which is not needed for school purposes. The Department of Archives and History may acquire the property upon making a determination that it is significant for historical, architectural, archaeological or cultural reasons pursuant to Section 39-5-5(d). Hilliard, April 27, 1995, A.G. Op. #95-0012.

The proposed sale of school property to a public hospital for health care related uses falls within the permitted uses outlined in Sections 37-7-471 and 37-7-473. Galloway, October 18, 1995, A.G. Op. #95-0673.

Section 37-7-471 et seq. are not designed for and cannot effectively convey unencumbered title to homes for private individuals. Golden, October 25, 1996, A.G. Op. #96-0670.

A county board of supervisors does not have the power to lease real property from a school district for the purpose of subsequently subleasing the property to citizens of the county to be used as a community recreational facility. Lamar, July 18, 1997, A.G. Op. #97-0429.

Quitman County School District may convey, without a bidding process, property to the county which will in turn convey the property to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

If property is subject to a present lease with the term expiring in the future, the school district may acquire the property subject to the lease. Bryant, January 15, 1999, A.G. Op. #98-0725.

A school district could make a direct sale of property to the General Services Administration for use as a United States District Courthouse pursuant to Section 3-5-1, and was not required to follow the procedures and provisions of Sections 37-7-451 et seq. and 37-7-471 et seq. so long as fair market value was obtained for the property. Dukes, March 31, 2000, A.G. Op. #2000-0171.

There exists ample authority for a school district to convey real property; however, such a sale requires a finding that the real property is not used for school or related purposes and is not needed in the operation of the schools of the district. Sanders, Feb. 11, 2000, A.G. Op. #2000-0050.

A school board does not have authority to release its reversionary interest to property to a non-profit entity in order to allow the conveyance of the property to a church, even if any funds from that conveyance would be used for the support of a volunteer fire protection district. Carnathan, Oct. 25, 2001, A.G. Op. #01-0649.

County Board of Education has authority to convey property to a town by whatever terms are deemed appropriate by the Board, providing the Board makes the proper factual findings as described in Section 37-7-471, and records those findings in the minutes. Phillips, Jan. 3, 2003, A.G. Op. #02-0757.

This section and § 37-7-477 are adequate authority for a county board of education to convey property to a rural water association in exchange for consideration of a fire hydrant, water meter and necessary hookup supplies, providing the board makes the proper factual findings as described in this section and records those findings in the minutes. Maples, Mar. 28, 2003, A.G. Op. #03-0146.

A school board has the authority to sell property for any amount it deems proper. Consequently, it may apportion the value of the property in order to come up with the amount it desires for the sale of the property. Jones, Apr. 29, 2004, A.G. Op. 04-0164.

Upon making the appropriate findings of fact pursuant to Sections 37-7-471 through 37-7-483, a school board is empowered to enter into a lease with any of the persons or entities as stated in these sections as the board thinks best without a bidding process and may either sell or lease property for a nominal consideration provided that the instrument used for the transaction contains a reverter clause. Connell, Oct. 14, 2005, A.G. Op. 05-0459.

A school district may approve permits for individuals to place FEMA trailers on school property after making the findings required by Section 37-7-471. Sessoms, Dec. 9, 2005, A.G. Op. 05-0559.

Where a city acquired property from a school district pursuant to Section 37-7-471, it may not sell the property directly to an individual, but must comply with the procedure as outlined in Sections 37-7-479 and 37-7-455. Treadway, Feb. 2, 2006, A.G. Op. 05-0061.

A school district may convey property without monetary consideration provided that the instrument used for the transaction contains a reversionary clause stating that if the property ceases to be used for Section 37-7-473 uses for which it was conveyed, it will revert to the school district. Maples, May 19, 2006, A.G. Op. 06-0179.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 110 et seq.

**CJS.**

78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761.

## § 37-7-473. Persons to whom property may be disposed; authorized uses.

School buildings, land, property and related facilities may be sold, conveyed, leased or otherwise disposed of under Sections 37-7-471 through 37-7-483, to any charter school, to any group of persons, to any association, club or corporation, or to any county, municipality or other political subdivision, to be used as a charter school facility, to be used as a civic, community, recreational or youth center, or to be used by any county or district fair association in connection with its activities, or to be used for church purposes, or to be used as a library or other public building, or to be used as a factory or otherwise in connection with an industrial enterprise, or to be used as part of a development activity to stimulate economic development activities within the district, or to enhance property values within the district, or to be used for any similar or related purpose or activity.

**HISTORY: Codes, 1942, § 6328-104; Laws, 1958, ch. 596, § 4; Laws, 2005, ch. 540, § 4; Laws, 2013, ch. 497, § 51, eff from and after July 1, 2013.**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by Sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Power of trustees of merged district.

**1. In general.**

In view of the statutory authorization of the use of school buildings for civic and community purposes, the title to land acquired for a school building does not revert to the grantor upon the discontinuance of school uses, where the building is used as a community center and voting place. McGee v. Chickasaw County School Board, 239 Miss. 5, 120 So. 2d 778, 1960 Miss. LEXIS 260 (Miss. 1960).

**2. Power of trustees of merged district.**

Deeds executed by the trustees of a school district which has been merged with another, of school house property, are ineffective. McInnis v. Board of Education, 242 Miss. 412, 135 So. 2d 180, 1961 Miss. LEXIS 577 (Miss. 1961).

## OPINIONS OF THE ATTORNEY GENERAL

The proposed sale of school property to a public hospital for health care related uses falls within the permitted uses outlined in Sections 37-7-471 and 37-7-473. Galloway, October 18, 1995, A.G. Op. #95-0673.

Quitman County School District may convey, without a bidding process, property to the county which will in turn convey the property to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

The statute contemplates the conveyance of school property to an association, club, or corporation, or to any county, municipality, or other political subdivision, and such property may be conveyed to those entities for use as a civic, community, recreational, or youth center, or for church purposes, or for use as a library or other public building, or in connection with an industrial enterprise. Davis, Jr., Mar. 2, 2001, A.G. Op. #01-0091.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 110, 111.

## § 37-7-475. Execution of conveyance or lease by president and secretary of board.

Upon being authorized by a resolution of the school board as is provided by Section 37-7-471, the president and secretary shall be authorized and empowered to execute, for and on behalf of the school district, a conveyance or lease of the property for the purposes, upon the terms and conditions, and for the consideration provided and specified by the school board, including retention of a partial interest, or undivided interest or other ownership interest in the property, in the discretion of the school board. It shall not be necessary or requisite that competitive bids be advertised for or received in connection with such sale, conveyance, leasing or other disposition of property.

**HISTORY: Codes, 1942, § 6328-106; Laws, 1958, ch. 596, § 6; Laws, 1986, ch. 492, § 34; Laws, 2005, ch. 540, § 5, eff from and after passage (approved Apr. 20, 2005).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by Sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

## § 37-7-477. Reverter provisions in instrument disposing of property where board retains no interest; section not applicable to acquisition by United States of school or other real property possessed by state.

(1) Unless a school board retains a partial interest, or undivided interest or other ownership interest in the school property being conveyed, any instrument conveying or leasing any school property under the provisions of Sections 37-7-471 through 37-7-483, shall provide that the title to such property shall automatically revert to the school district, if such property shall cease to be used for the purpose for which it is conveyed or leased. Said instrument shall also contain the condition that the grantee or lessee shall keep and maintain said property in a good state of repair and shall keep said property insured in a reasonable amount against loss by fire, windstorm and other hazards. Upon breach of any of said conditions, the school board shall have the right of reentry upon said property as for condition broken and shall have the power and authority to bring and maintain such actions as shall be necessary and appropriate for such purpose in its own name. However, the provisions of this section shall not be mandatory in the event that the school board retains a partial interest, or undivided interest or other ownership interest in the school property being conveyed.

(2) The provisions of subsection (1) of this section shall not be applicable to any transaction of acquisition by the United States, by purchase, condemnation, conveyance or otherwise of any school property or any other real property possessed by the state as authorized by Section 3-5-1.

**HISTORY: Codes, 1942, § 6328-105; Laws, 1958, ch. 596, § 5; Laws, 1966, ch. 413, § 1; Laws, 1986, ch. 492, § 35; Laws, 2005, ch. 540, § 6, eff from and after passage (approved Apr. 20, 2005); Laws, 2018, ch. 347, § 1, eff from and after July 1, 2018.**

**Amendment Notes —** The 2018 amendment added (2).

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by Sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

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Assuming that there are no other federal or state impediments to demolition and replacement which would protect a building, then Section 37-7-477 would permit demolition and replacement or improvements to the property so long as the grantee maintained the newly constructed buildings in good repair and adequately insured same. Galloway, October 18, 1995, A.G. Op. #95-0673.

Quitman County School District may convey, without a bidding process, property to the county which will in turn convey the property to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

County Board of Education has authority to convey property to a town by whatever terms are deemed appropriate by the Board, providing the Board makes the proper factual findings as described in Section 37-7-471, and records those findings in the minutes. Phillips, Jan. 3, 2003, A.G. Op. #02-0757.

This section and § 37-7-471 are adequate authority for a county board of education to convey property to a rural water association in exchange for consideration of a fire hydrant, water meter and necessary hookup supplies, providing the board makes the proper factual findings as described in § 37-7-471 and records those findings in the minutes. Maples, Mar. 28, 2003, A.G. Op. #03-0146.

If a school board sells property pursuant to the additional method, it does not have the authority to release its reversionary interest to property. Jones, Apr. 29, 2004, A.G. Op. 04-0164.

The critical factor in the transfer of school property is whether the interest retained can be considered an ownership interest. The ownership interest retained must be substantial and more than a nominal or insignificant interest. Treadway, June 26, 2006, A.G. Op. 06-0224.

When determining the terms of a lease where the school board retains an ownership interest, it is within the discretion of the board to require the lessee to maintain insurance. Donovan, Oct. 18, 2006, A.G. Op. 06-0478.

## § 37-7-479. Conditions under which disposed of property may later be sold; disposition of proceeds of sale.

Any group of persons, any association, club or corporation, or any county, municipality or other political subdivision having acquired school buildings, land, property or related facilities under the provisions of Sections 37-7-471 through 37-7-483, may, by resolution duly adopted at a regular or special meeting called and convened for such purpose, determine that such school buildings, land, property or related facilities, or any portion thereof, are no longer needed or used for the purpose for which such was acquired, and may by such resolution provide for the sale of such school buildings, land, property or related facilities, or any portion thereof. Said resolution shall be forwarded to the school board of the school district involved, and if the said board shall adopt a resolution determining that such school buildings, land, property or related facilities, or such portion thereof as is sought to be sold, is no longer needed or used by the school district involved, then such school buildings, land, property or related facilities, or any portion thereof, may be sold in accordance with the procedure set forth in Section 37-7-455.

The school board of such district shall by order entered on its minutes, provide for the distribution of the proceeds received from the sale of such property in such proportions as the said school board may, in its discretion, determine reasonable as the interests may appear between the district and the group of persons, association, club, corporation, county, municipality or other political subdivision having an interest in such property at the time of such sale.

However, the provisions of this section shall not be mandatory if the school board retains a partial interest, or undivided interest or other ownership interest in the school property being conveyed.

**HISTORY: Codes, 1942, § 6328-105; Laws, 1958, ch. 596, § 5; Laws, 1966, ch. 413, § 1; Laws, 1986, ch. 492, § 36; Laws, 2005, ch. 540, § 7, eff from and after passage (approved Apr. 20, 2005).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by Sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

### OPINIONS OF THE ATTORNEY GENERAL

Quitman County School District may convey, without a bidding process, property to the county which will in turn convey the property to an economic development district which will lease the property to a private assisted living facility because the conveyance will promote the general welfare goals of the statute. Scripper, March 20, 1998, A.G. Op. #98-0129.

Where a city acquired property from a school district pursuant to Section 37-7-471, it may not sell the property directly to an individual, but must comply with the procedure as outlined in Sections 37-7-479 and 37-7-455. Treadway, Feb. 2, 2006, A.G. Op. 05-0061.

## § 37-7-481. School boards empowered to exercise authority conferred.

The authority conferred by Sections 37-7-471 through 37-7-483 may be exercised by the existing school board of any school district in which any such school building, land, property or other school facility is located or situated. Such school board may contract with any other school board, or any other governmental entity, to assign and transfer its rights and duties under this chapter, under such terms and conditions as the school board may determine, in its discretion, to further the public interest. The sections, without reference to any other statute, shall be deemed full, complete and exclusive power for the exercise of the authority conferred hereby.

**HISTORY: Codes, 1942, § 6328-102; Laws, 1958, ch. 596, § 2; Laws, 1986, ch. 492, § 37; Laws, 2005, ch. 540, § 8, eff from and after passage (approved Apr. 20, 2005).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by Sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

## § 37-7-483. Declaration of legislative intent; relationship of provisions with other laws.

The Legislature hereby declares that it is its intention and purpose to authorize and permit each and every type of disposition of property permitted in Sections 37-7-471 through 37-7-481 and by each and every type of transfer mentioned, and by every combination possible thereunder.

Said sections shall be construed to be supplemental to Sections 37-7-451 through 37-7-457 and Sections 37-7-501 through 37-7-511, and to all other statutes dealing with the subject matter thereof, and shall be deemed to provide a supplemental, additional and alternate method for the disposition of school buildings, land, property and other school facilities which are no longer to be used for school purposes and are not needed in the operation of the schools of the district or for the conveyance of a partial ownership interest or for exchange, sale or conveyance of an undivided interest in school buildings, land, property or other school facilities that may yield a long-term economic value to the district, in the discretion of the local school board, based on an objective cost/benefit analysis as to whether the proposal shall maximize the interest of the taxpayers.

**HISTORY: Codes, 1942, §§ 6328-101, 6328-107; Laws, 1958, ch. 596, §§ 1, 7; Laws, 2005, ch. 540, § 9, eff from and after passage (approved Apr. 20, 2005).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Authority conferred by Sections 37-7-471 through 37-7-483 applicable to sale, etc. of relocatable classrooms, see § 37-7-471.

## § 37-7-485. School Property Development Act; optional method of disposal of surplus school property to generate greater revenue than public sale; school boards authorized to sell, convey or exchange nonoperational property interest in proposed development projects; school boards authorized to contract with other entities for development, design, construction, financing, ownership and operation of surplus school property; school boards authorized to pledge revenues received under Sections 37-7-471 through 37-7-483 for repayment of notes and other obligations; sound business practices to be used; public record of final and signed contract; restrictions on persons related by consanguinity or affinity to members of school board or superintendent from having interests in project; conditions on exercise of option to enter into development agreement; certification regarding statements of economic interest; property developed to be deemed for school or educational purposes.

(1) This section shall be referred to as the "School Property Development Act of 2005." It is the intent of the Legislature that this section shall provide school boards with an alternative optional method of disposal of surplus school property that may generate greater returns to the district than a public disposal sale, or to promote or stimulate economic development within the school district or to promote, stabilize or enhance property and tax values within the school district.

(2) The school board of any school district shall be authorized and empowered, in its discretion, to sell, convey or exchange a partial interest, undivided interest or any other interest in real property (other than sixteenth section public school trust land), in whole or in part, for a nonoperational interest in any proposed development of the property, including ownership of shares of a domestic corporation or a membership interest in a limited liability company or a limited partnership interest, any of which is organized for the operation of any project, development or activity that, in the discretion of the school board, will have the potential for fostering economic development activities, increasing property values, increasing student development or enhancing public safety. The school board may contract with any other governmental entity, university or community college, corporation, person or other legal entity for the development, design, construction, financing, ownership or operation of any project, development or activity and may issue notes, leases, bonds or other written obligations to finance such activities. The school board may pledge any revenues or taxes it is to receive from such sale, conveyance or exchange, including any shares of a corporation or membership interest in a limited liability company or limited partnership interest under this subsection or under Sections 37-7-471 through 37-7-483, to secure the repayment of any notes, leases (excluding leases of sixteenth section public school trust land), bonds or other written obligations of the district issued under any provision of state law. Any such pledge of revenues or other monies shall be valid and binding from the date the pledge is made; such revenues or other monies so pledged and thereafter received by the school district shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the school district irrespective of whether such parties have notice thereof. Neither the resolutions, contracts or any other instrument by which a pledge is created need be recorded. Any debt secured in whole or in part by a pledge of such revenues or other monies shall not be subject to or included in any debt limitation imposed on the issuance of such debt. This subsection (2) shall not be construed to apply to sixteenth section public school trust land.

(3) The school board shall use sound business practices when executing exchanges as provided in this section. The school board may utilize the services of the Mississippi Development Authority, the local planning and development district or the Board of Trustees of State Institutions of Higher Learning when executing exchanges as provided in this section. The local school board shall require, in any project exceeding Two Hundred Thousand Dollars ($200,000.00) that the party with whom the school board is contracting shall provide the following information, at a minimum:

(a) A two-year business plan (which shall include pro forma balance sheets, income statements and monthly cash flow statements);

(b) Financial statements and tax returns for the three (3) years immediately prior to the date the contract is formed;

(c) Credit reports on all persons or entities with a twenty percent (20%) or greater interest in the entity;

(d) Data supporting the expertise of the entity's principals;

(e) A cost benefit analysis of the project performed by the Mississippi Development Authority, a state institution of higher learning or other entity selected by the local school board; and

(f) Any other information required by the local school board.

This subsection (3) shall not be construed to apply to sixteenth section public school trust land.

(4) The local school board shall make public record any final and signed contract created under this section.

(5) No person involved in any economic development project entered into by a school board under the provisions of this section shall be related by consanguinity or affinity within the third degree to any member of the school board or the superintendent or any assistant superintendent of the school district, nor shall any such person have an interest in any business or have an economic relationship with any member of the school board or the superintendent or any assistant superintendent of the school district.

(6) No person, or any agent, subsidiary or parent corporation or firm owned in whole or in part by the person shall be eligible to bid or otherwise participate in the construction, contracting, or subcontracting on any project or part thereof for which the person has been hired to perform construction program management services. Any contract for public construction that violates this provision shall be void and against the public policy of the state. For purposes of this subsection, the term "construction program management services" means a set of management and technical services rendered by a person or firm to a public sector building owner during the predesign, design, construction, or post-construction phases of new construction, demolition, alteration, repair, or renovation projects. These services include any one or more of the following: project planning, budgeting, scheduling, coordination, design management, construction administration, or facility occupancy actions, but shall not include any component of the actual construction work. The term does not include the services performed by the general contractor who is engaged to perform the construction work, or services customarily performed by licensed architects or registered engineers.

(7) This section shall be supplemental and additional to any powers conferred by other laws on school districts. However, this section shall not grant any authority to a school board to issue debt in any amount that is not otherwise expressly provided for by law, and shall not grant any authority to impose, levy or collect any tax that is not otherwise expressly provided for by law.

(8) If a school board exercises its option to enter into a development agreement or other contract under this section or to transfer any property or interest therein to a third party for purposes of future development, the following conditions shall apply:

(a) The board shall have the express authority to retain a deed of trust or such other security interest in the property in an amount equal at least to the value of the property at the time of such transfer, less any consideration paid by the developer or other parties;

(b) The liability of the school board and the school district under any such development agreement shall be limited to the value of any retained property interest in the development agreement or the property that is the subject of the development agreement. Neither the school board nor the district shall be liable to any party nor shall it indemnify or hold harmless any party for any liabilities, obligations, losses, damages, penalties, settlements, claims, actions, suits, proceedings or judgments of any kind and nature, costs, expenses, or attorney's fees incurred by such party or parties for any act or action arising out of, or in connection with any development agreement entered into by the school board, other than the value of the retained ownership interest in the property that was conveyed under such development agreement.

(9) Before entering into any transaction as provided in this section, the school board members shall certify that they are in compliance with Section 25-4-25 regarding filings of statements of economic interest with the Mississippi Ethics Commission and that they will receive no direct or indirect pecuniary benefit as a result of the transaction or be in violation of the provisions of Section 25-4-105 regarding the improper use of official position.

(10) [Deleted]

(11) Any property developed by a school district under this section shall be deemed to be for "school purposes" or for "educational purposes."

**HISTORY: Laws, 2005, ch. 540, § 1; Laws, 2006, ch. 593, § 1, eff from and after passage (approved Apr. 24, 2006).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

Board of Trustees of State Institutions of Higher Learning generally, see § 37-101-1 et seq.

## § 37-7-487. Estimation and pledge of revenues by school districts; "revenues" defined; authorization to enter into development agreements.

(1) Notwithstanding any other provision of law, a school district may estimate the amount of revenues, as defined herein, to be generated from any parcel or parcels of any type of property within the school district and may irrevocably pledge such revenues to the repayment of any debt or other obligation which the district may issue or incur under Sections 31-7-13(e), 31-7-14, 37-7-351 et seq., 37-7-471 et seq., 37-7-485 et seq., 37-59-1 et seq., and 37-59-101 et seq.

(2) Any district that pledges revenues under the provisions of this section shall annually appropriate an amount of such revenues, other than the avails of any special tax otherwise levied to pay debt service on bonds or notes of the district, to pay the debt or other obligations for which the revenues are

pledged. Any debt or obligation secured by a pledge of revenues under this section shall not be subject to any debt limit or annual appropriation limitation imposed by any other statute. To further secure the school district's pledge, the district may irrevocably instruct the appropriate tax assessor or collector to irrevocably transfer on behalf of the district the pledged amount from any ad valorem tax collections, other than any special tax levy specifically imposed to pay debt service on any bonds or notes of the district, directly to a paying agent, trustee or other third party responsible for paying the debt or obligation of the district. Upon receipt of such written instructions, the appropriate tax assessor or collector shall transfer the pledged revenues as directed in writing by the school district.

(3) The term revenues, as used in this section shall mean revenues of all types, including ad valorem tax collections, other than collections from special levies specifically levied to pay debt service on any bonds or notes of the school district, lease or development revenues, and any special development fees imposed by a developer of property within the school district as provided herein.

(4) Any school district may enter into an agreement with a developer pursuant to which the developer agrees to impose a development fee, in the amount and in the manner agreed to by the district and the developer, on property being developed within the district by the developer. The term of any such agreement shall not exceed fifty (50) years. Upon the agreement being recorded in the land records of the chancery clerk of the county in which the property is located, the development fee shall become a lien on the property subject to the agreement between the developer and the district and shall be payable by all owners of the subject property at the same time and in the same manner, and the payment of such fee shall be enforced by the taxing authority in the same manner as other ad valorem taxes levied on the property.

(5) Nothing in this section shall be construed as giving school districts additional debt or to levy any additional taxes other than as allowed by this section or as otherwise provided by law.

**HISTORY: Laws, 2006, ch. 593, § 2, eff from and after passage (approved Apr. 24, 2006).**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

## DISPOSITION OF PROPERTY ON DISSOLUTION OF SCHOOL DISTRICT

Sec.

37-7-501. Disposition of property of dissolved district having no outstanding bonds.
37-7-503. Disposition of property of dissolved district having outstanding bonds.
37-7-505. Assumption of liability for bonds by district acquiring property of dissolved district purchased with proceeds of bonds generally.

| Sec. | |
|---|---|
| 37-7-507. | Voluntary assumption of liability by annexing district on bonds of dissolved district. |
| 37-7-509. | Transfer of funds between school districts. |
| 37-7-511. | Authority to execute conveyances. |

## § 37-7-501. Disposition of property of dissolved district having no outstanding bonds.

When any school district now existing or hereafter created under any of the laws of this state shall be dissolved, abolished or discontinued, either as a result of the reorganization and reconstitution of school district under the provisions of Article 1 of this chapter, or otherwise, and such school district at the time of the dissolution or discontinuance thereof shall have no outstanding bonds or other indebtedness then all funds, property and other assets which shall belong to such school district at the time of the dissolution or discontinuance thereof shall become the property, funds and assets of the school district to which the territory formerly comprising such dissolved district is annexed. If the territory of the dissolved district is annexed to or becomes a part of two (2) or more school districts, then such property, funds and other assets shall be divided and apportioned among such districts in proportion to the number of children enrolled in the schools of the dissolved district at the time of the dissolution thereof who reside in the territory annexed to each district, or in such other manner as may be agreed upon by the school boards of the districts involved. Any school property or other assets of the dissolved district which are not to be used by the school district or districts to which the territory of the dissolved district is annexed may be sold by the board of supervisors of the county in which the property or other assets are located, and, in such case, the proceeds of the sale thereof shall be disposed of in the manner otherwise provided in this section for the disposition of the funds and other assets of the dissolved district.

**HISTORY: Codes, 1942, § 6328-61; Laws, 1953, Ex Sess, ch. 29, § 1; Laws, 1986, ch. 492, § 38, eff from and after July 1, 1987.**

**Editor's Notes —** Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987. For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 38, 39, 41.

**CJS.**

78 C.J.S., Schools and School Districts §§ 112-117.

### § 37-7-503. Disposition of property of dissolved district having outstanding bonds.

When any school district now existing or hereafter created shall be dissolved, abolished or discontinued, either as a result of the reconstitution or reorganization of school districts under Article 1 of this chapter, or otherwise, and shall have outstanding bonds or other indebtedness, and such bonds or other indebtedness are not assumed by another school district under the provisions of Section 37-7-505, then all funds which may be on hand to the credit of the dissolved district at the time of the dissolution or abolition thereof shall be paid into the bond and interest sinking fund or into a special fund to be used for the payment of such outstanding bonds or other indebtedness. All property and other assets which shall belong to such dissolved district at the time of the dissolution or discontinuance thereof may be sold by the board of supervisors of the county in which the property or other assets are located, and the proceeds of such sale shall likewise be paid into the bond and sinking fund or other special fund for the payment of such bonds or other indebtedness. If, after paying such bonds or other indebtedness, any funds shall remain, the same shall become the property of the district to which the territory of the dissolved district is annexed, or if such territory be annexed to two (2) or more districts then such funds shall be divided among such districts in proportion to the number of children enrolled in the schools of the dissolved district at the time of the dissolution thereof who reside in the territory annexed to each district or in such other manner as may be agreed upon by the school boards of the districts involved. Said sales shall be conducted in the manner and following the procedure set up in Sections 37-7-451 through 37-7-457.

**HISTORY: Codes, 1942, § 6328-63; Laws, 1953, Ex Sess, ch. 29, § 3; Laws, 1986, ch. 492, § 39, eff from and after July 1, 1987.**

**Editor's Notes —** Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987. For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

#### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 31 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 112-117.

### § 37-7-505. Assumption of liability for bonds by district acquiring property of dissolved district purchased with proceeds of bonds generally.

When any school district now existing or hereafter created shall be dissolved, abolished or discontinued, either as the result of the consolidation, reorganization or reconstitution of school districts under the provisions of Article 1 of this chapter, or otherwise, and such school district shall, at the time of the dissolution or discontinuance thereof, have outstanding bonds or other indebtedness, the territory formerly composing and comprising such dissolved school district shall remain liable for such bonds or other indebtedness, and the board of supervisors of the county shall continue to levy taxes upon such territory until such bonds or other indebtedness shall be fully paid according to the terms thereof. However, in the event a school building or other school facilities shall have been acquired, erected, equipped, repaired or remodeled with the proceeds of any such bonds or other indebtedness outstanding, and such school building or other school facility shall be utilized by the school district to which all or any part of the territory of the dissolved district is annexed, and shall be approved as an attendance center by the school board, and the State Board of Education, then the school district so utilizing such school building or other school facility shall become liable for and assume the payment of such outstanding bonds or other indebtedness, or such portion thereof as was used in the acquisition, erection, equipping, repairing or remodeling of the school building or other school facility involved. Taxes shall be levied upon all of the taxable property of the school district so utilizing such school building or other school facility to pay the balance of the principal and interest upon such outstanding bonds or other indebtedness in the same manner as if such bonds had originally been issued or such indebtedness originally incurred by such district, and, in such case, the title to the school building or other school facility and the land upon which it is located shall be vested in the school district so utilizing same. Nothing herein shall be construed, however, to affect adversely the rights of the holders of any such outstanding bonds or other indebtedness, and no school district shall be required to assume liability for the payment of any bonds or other indebtedness incurred by a former school district unless the school building or other school facility acquired, erected, equipped, repaired or remodeled with the proceeds of such bonds or other indebtedness shall be utilized by such school district, with the approval of the school board, and the State Board of Education, as a part of the long range school program of such district. In the event the outstanding bonds or other indebtedness of a dissolved school district are assumed by another school district as provided in this section, then the remaining property, assets and funds of the dissolved district which do not become the property of the school district assuming such indebtedness shall be disposed of in the manner provided in Section 37-7-501.

**HISTORY: Codes, 1942, § 6328-62; Laws, 1953, Ex Sess, ch. 29, § 2; Laws, 1986, ch. 492, § 40, eff from and after July 1, 1987.**

**Editor's Notes** — Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987. For present provisions relating to reorganization of school districts, see § 37-7-103 et seq.

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 5 et seq.

**CJS.**
78 C.J.S., Schools and School Districts
§§ 112-117.

## § 37-7-507. Voluntary assumption of liability by annexing district on bonds of dissolved district.

Notwithstanding any of the provisions of Sections 37-7-501 through 37-7-511, any school district to which all or a part of the territory of a dissolved school district is annexed may, by agreement of the school board thereof, assume the payment of all or any part of the outstanding bonds or other indebtedness of the dissolved district even though it is not mandatorily required so to do under the provisions of said sections.

In addition, no such assumption of indebtedness under the provisions of this section shall be binding and effective until the school board of the school district proposing to assume such indebtedness shall adopt a resolution declaring its intention so to do, stating the amount, the nature of the indebtedness to be assumed and the date upon which such board proposes to take final action assuming such indebtedness. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published or having a general circulation in the school district proposing to assume such indebtedness. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date specified in such resolution for final action, and the last publication shall be made not more than seven (7) days prior to such date. If twenty percent (20%) of the qualified electors of the school district proposing to assume such indebtedness shall file a written protest against such assumption of indebtedness on or before the date specified in such resolution, then an election upon the question of the assumption of such indebtedness shall be called and held in said school district in the same manner as other special elections are held therein. If no such protest be filed, then such assumption of indebtedness shall become binding and effective without an election on the question. If an election is called under the provisions of this section, notice thereof shall be given for the same time and in the same manner required for the publication of the resolution hereinabove referred to, and such election shall be held as far as practicable in the same manner as state and county elections are held. At such election all qualified electors of the school district may vote, and the ballots used thereat shall have printed thereon a brief statement of the purpose of the school board to assume such indebtedness, together with the amount thereof, and the words: "For the assumption of the indebtedness," and "Against the assumption of the indebtedness," and the voter shall vote by placing a cross (X) or check mark (√) opposite his choice on the proposition. If at said election three-fifths (3/5) of the qualified electors of the school district who vote in said election vote in favor of the assumption of such indebtedness, then such indebtedness shall be assumed by the school board; otherwise, such indebtedness shall not be assumed.

**HISTORY: Codes, 1942, § 6328-64; Laws, 1953, Ex Sess, ch. 29, § 4; Laws, 1986, ch. 492, § 41, eff from and after July 1, 1987.**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 53-55.

**CJS.**
78 C.J.S., Schools and School Districts §§ 112-117.

## § 37-7-509. Transfer of funds between school districts.

The superintendent of schools, upon order of the school board, shall be authorized and empowered to make such transfers of funds to and from the credit of the school districts involved as may be necessary to carry out the terms and provisions of Sections 37-7-501 through 37-7-511.

**HISTORY: Codes, 1942, § 6328-65; Laws, 1953, Ex Sess, ch. 29, § 5; Laws, 1986, ch. 492, § 42, eff from and after July 1, 1987.**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

## § 37-7-511. Authority to execute conveyances.

The school boards of the respective school districts in whom title to such property may be vested are hereby empowered and authorized to execute proper conveyances of such property in order to carry out the purposes of Sections 37-7-501 through 37-7-511.

**HISTORY: Codes, 1942, § 6328-66; Laws, 1953, Ex Sess, ch. 29, § 6; Laws, 1986, ch. 492, § 43, eff from and after July 1, 1987.**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 that exempt certain transfers of property from the requirements of this article, see § 37-7-355.

# DISPOSITION OF LANDS ACQUIRED BY TOWNSHIP TRUSTEES FOR SCHOOLS AND SCHOOL LANDS

Sec.
37-7-531. Authorization and procedure.

## § 37-7-531. Authorization and procedure.

The board of supervisors of each county wherein are situated lands, other than 16th section lands or lands held in lieu of 16th section lands, acquired by township trustees for schools and school lands as created by Article Five, Chapter Nine, Hutchinson's Mississippi Code 1848, amendments thereto, and related statutes, where title to said lands remains in said trustees and their successors, is hereby authorized and empowered, in its discretion, upon the expiration of any current lease, to lease said lands in whole or in part for any term of years not to exceed ninety-nine, or to sell said lands or any part thereof outright as herein provided.

If leased, the rental, in the discretion of the board, may be in gross, or on an annual basis evidenced by notes of lessee. On the expiration or termination of any lease, the board may release, or then sell outright, the whole or any part of said lands.

In the event the board of supervisors shall determine to lease or sell said lands, such lands shall be sold or leased at public contract after said board has advertised such lands for sale or lease in a newspaper published in the county of said board, or if no newspaper be published in said county, then in a newspaper having a general circulation therein for two successive weeks, the first being at least ten (10) days prior to said public contract. If no bid acceptable to the board of supervisors is received after said advertisement, the board of supervisors, with the approval of the county superintendent of education, may lease same by private contract.

In the event of an outright sale, there shall be reserved, for the benefit of the township fund of the township in which the lands may be located, one-half of the oil, gas and other minerals in, on and underlying the land sold.

The board of supervisors of each county wherein may be situated any such lands, is hereby authorized and empowered, in its discretion, to lease said lands or any part thereof, or the interest reserved in any sale, for oil, gas and mineral exploration and development, within the limitations of and upon compliance with the requirements of all statutes, as such statutes now exist or may be hereafter enacted or amended, governing lease for mineral exploration and development of 16th section lands and lands held in lieu of 16th section lands.

The funds received from either lease or sale or mineral lease shall be added to the principal fund of the township, but in the event of a sale, fifty percent (50%) of the consideration may be expended by the board of supervisors in the construction of school buildings.

**HISTORY: Codes, 1942, § 6218.5; Laws, 1950, ch. 299, §§ 1-6.**

**Cross References —** Provisions of the Emergency School Leasing Authority Act of 1986 which exempt certain transfers of property from the requirements of this article, see § 37-7-355.

## ARTICLE 11.

## MUNICIPAL SEPARATE SCHOOL DISTRICTS [REPEALED].

Sec.
37-7-601 through 37-7-645. Repealed.

### §§ 37-7-601 through 37-7-645. Repealed.

Repealed by Laws 1986, ch. 492, § 47, eff from and after July 1, 1987.

§§ 37-7-601 through 37-7-645. [Laws, 1924, ch. 283; Codes 1930, § 6790; 1930, ch. 278; Codes, 1942, §§ 3374-108, 6328-76.7, 6328-76.8, 6633, 6411-01 to 6411-11, 6411-15, 6411-16; Laws, 1950, ch. 491, § 108; Laws, 1953, Ex Sess, ch. 23, §§ 1-11, 15 and 16; Laws, 1955, Ex Sess, chs. 50 and 51; Laws, 1958, ch. 519, §§ 1-4; Laws, 1959, Ex Sess, ch. 29, § 1; Laws, 1964, ch. 395; Laws, 1970, ch. 376, §§ 1-3; Laws, 1971, ch. 355, § 1; Laws, 1972, ch. 456, §§ 2, 3; Laws, 1974, ch. 476; Laws, 1985, ch. 460, § 3; Laws, 1986, ch. 421]

**Editor's Notes —** Former §§ 37-7-601 through 37-7-645 related to municipal separate school districts. For provisions providing that all public school districts have a common system of administration after July 1, 1987, see § 37-6-1 et seq.

## ARTICLE 13.

## SPECIAL MUNICIPAL SEPARATE SCHOOL DISTRICTS.

Sec.
37-7-701. Applicability of article; construction of article.
37-7-703. Selection of trustees of county-wide district where majority of inhabitants reside within city limits.
37-7-705. Selection of trustees of county-wide district where majority of inhabitants reside outside city limits.
37-7-707. Composition of board of trustees; qualifications, election and terms of office of trustees.
37-7-709. Filling of vacancies.
37-7-711. Filing of petition of nomination by candidate for board of trustees; determination of election results; runoff election.
37-7-713. Selection of trustees in districts embracing less than entire area of county.
37-7-715. Selection of trustees by agreement of governing authorities of county and municipality generally.
37-7-717. Optional methods of selecting trustees pursuant to agreement.
37-7-719 and 37-7-721. Repealed.
37-7-723. District board of trustees to supersede county board of education in county-wide districts.
37-7-725. District superintendent to supersede county superintendent of education in county-wide districts.

Sec.
37-7-727 through 37-7-745. Repealed.

## § 37-7-701. Applicability of article; construction of article.

The provisions of this article shall be applicable only to those municipal separate school districts which have been or shall be organized, reorganized or reconstituted in accordance with the provisions of Article 1 of this chapter, with added territory where the added territory, exclusive of any added territory which was a part of such municipal separate school district before such organization, reorganization or reconstitution, shall contain twenty-five percent (25%) or more of the total number of educable children of such district. Such school districts, for the purposes of this article, shall be known as special municipal separate school districts. This article shall be supplementary and in addition to all existing school laws of this state and, except as herein expressly provided, all applicable statutes relative to the establishment, government, management, and operation of municipal separate school districts shall be fully applicable to such special municipal separate school districts.

**HISTORY: Codes, 1942, § 6328-81; Laws, 1956, ch. 296, § 1.**

**Editor's Notes** — Article 1 of this chapter, referred to in this section, was repealed by Laws of 1986, ch. 492, § 50, effective from and after July 1, 1987.

For present provisions relating to Abolition, reorganization or alteration of school districts, see § 37-7-103 et seq.

**Cross References** — Homestead exemptions, see § 27-33-3.

## § 37-7-703. Selection of trustees of county-wide district where majority of inhabitants reside within city limits.

In all such special municipal separate school districts which embrace the entire county in which, according to the latest available federal census, a majority of the inhabitants of the county reside within the corporate limits of the municipality, the board of trustees of such special municipal separate school district shall be chosen and selected in the manner provided by subsection (1) of Section 37-7-203, and all of the provisions thereof shall be fully applicable in all respects to the selection and constitution of such board of trustees.

**HISTORY: Codes, 1942, § 6328-82; Laws, 1956, ch. 296, § 2.**

**Cross References** — Homestead exemptions, see § 27-33-3.

Abolition and discontinuance of county board of education in any county wherein special municipal separate school district embraces entire county and devolution of its duties upon district board of trustees, see § 37-7-723.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 213, 214.

## § 37-7-705. Selection of trustees of county-wide district where majority of inhabitants reside outside city limits.

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, the board of trustees of such district shall be constituted in accordance with the provisions of Sections 37-7-707 through 37-7-711, unless the governing authorities of the municipality and of the county shall have provided for one of the alternative methods of organization as provided by Sections 37-7-715 and 37-7-717.

**HISTORY: Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.**

**Cross References —** Homestead exemptions, see § 27-33-3.

Abolition, reorganization or alteration of district, see § 37-7-103 et seq.

Abolition and discontinuance of county board of education in any county wherein special municipal separate school district embraces entire county and devolution of its duties upon district board of trustees, see § 37-7-723.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 213, 214.

## § 37-7-707. Composition of board of trustees; qualifications, election and terms of office of trustees.

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, the board of trustees of such district shall be composed of five members, one of whom shall be a resident qualified elector of each supervisors district of the county. Said trustees shall be elected from the county at large by the qualified electors of the county at the first regular general election following the approval by the state educational finance commission of the organization of such district. Such trustees shall take office on the first Monday of January following their election.

At such election the members of the said board from supervisors districts one and five shall be elected for a term of six years, the members from districts three and four shall be elected for a term of four years, and the members from district two shall be elected for a term of two years. Thereafter members shall be elected at regular general elections as vacancies occur for terms of six years each and shall take office on the first Monday of January after their election.

**HISTORY: Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.**

**Editor's Notes —** Section 37-45-3 provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

**Cross References —** Homestead exemptions, see § 27-33-3.

State Board of Education generally, see § 37-1-1 et seq.

Abolition, reorganization or alteration of district, see § 37-7-103 et seq.

Composition of boards of trustees of municipal separate school districts, qualifications, selection, terms of office, see § 37-7-203.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 73, 76 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 219-236.

## § 37-7-709. Filling of vacancies.

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, all vacancies which may occur during the term of office shall be filled by appointment by the remaining members of the board of trustees, such appointee to have the same qualifications as other members of the board and to reside in the same supervisors district as the former member whose death, removal or resignation caused the vacancy. Such appointment shall be made within thirty days after the vacancy occurs. The person so appointed shall serve only until the first Monday of January following the next regular general election after such appointment and, at the regular general election next preceding such first Monday in January, a person shall be elected for the remainder of the unexpired term at the same time and in the same manner as a trustee is elected for the full term next expiring, and such person shall take office on said first Monday of January.

**HISTORY: Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3.**

**Cross References —** Homestead exemptions, see § 27-33-3.

Abolition, reorganization or alteration of district, see § 37-7-103 et seq.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 65.

**CJS.**
78 C.J.S., Schools and School Districts §§ 255, 271-277.

## § 37-7-711. Filing of petition of nomination by candidate for board of trustees; determination of election results; runoff election.

In all such special municipal separate school districts which may be so organized, reorganized or reconstituted to embrace the entire county in which the majority of the inhabitants of the county reside outside the corporate limits of the municipality, the name of any qualified elector who is a candidate for the board of trustees of such special municipal separate school district, whether such person be a candidate for an unexpired term or for a full term, shall be placed on the ballot used in the elections, provided that the candidate files with the county election commissioners, not more than ninety (90) days and not less than sixty (60) days prior to the date of such general election, a petition of nomination signed by not less than fifty (50) qualified electors of the county. Where there are less than one hundred (100) qualified electors in said area represented by the trustee, it shall only be required that said petition of nomination be signed by at least twenty percent (20%) of the qualified electors in said area. However, in any such special municipal separate school district which embraces the entire county and which borders the Mississippi River and in which Interstate Highway 20 and United States Highway 61 intersect and having a population in excess of forty-seven thousand (47,000) according to the 1990 federal decennial census, the candidate shall be required to file a petition of nomination with the county election commissioners not less than sixty (60) days prior to the date of such general election, in addition to the other requirements prescribed herein.

The candidate in each election who receives the majority of votes cast in the election shall be declared to have been elected. If no candidate receives a majority of the votes cast at the election, a runoff shall be held between the two (2) candidates receiving the highest number of votes in the first election. The runoff election, in the event that such is necessary, shall be held three (3) weeks after the first election.

**HISTORY: Codes, 1942, § 6328-83; Laws, 1956, ch. 296, § 3; Laws, 2009, ch. 470, § 3; Laws, 2011, ch. 441, § 1; Laws, 2014, ch. 422, § 2, eff from and after July 1, 2014; Laws, 2019, ch. 308, § 2, eff from and after July 1, 2019.**

**Editor's Notes** — By letter dated August 28, 2009, the United States Attorney General interposed no objection to the change in the general election date provided for in Chapter 470, Laws of 2009. As for the proposed changes from a plurality vote to a majority vote requirement for county school board members, for trustees for certain municipal separate school districts and for trustees for special municipal school districts, and the requirement that a runoff election be held three weeks after the election if no candidate received a majority, the U.S. Attorney General requested additional information from the state. After review of the information provided by the state, the U.S. Attorney General concluded that the state had not met its burden of showing that the proposed changes had neither a discriminatory purpose nor a discriminatory effect, and by letter dated March 24, 2010, objected to the proposed change from plurality to majority vote and the runoff requirement provided for in Chapter 470, Laws of 2009.

Chapter 441, Laws of 2011, included a version of this section that contained amendments that were in Section 3, Chapter 470, Laws of 2009. The United States Attorney General previously objected to the amendments to this section contained in Chapter 470, Laws of 2009, pursuant to the provisions of Section 5 of the Voting Rights Act of 1965. For this reason the version of Section 37-7-711 in Chapter 441, Laws of 2011, that contains the amendments in Section 3, Chapter 470, Laws of 2009, is not printed.

By letter dated August 8, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 441.

**Amendment Notes —** The 2019 amendment, in the last paragraph, substituted “majority of votes” for “highest number of votes,” and added the last two sentences; and made minor stylistic changes.

**Cross References —** Homestead exemptions, see § 27-33-3.

Abolition, reorganization or alteration of district, see § 37-7-103 et seq.

## § 37-7-713. Selection of trustees in districts embracing less than entire area of county.

In all special municipal separate school districts where the district embraces less than the entire area of the county and where the majority of the educable children of such district reside outside the limits of the municipality, unless the governing authorities of the municipality and the county provide for one of the alternative methods of organization as set out in Sections 37-7-715 and 37-7-717, the said special municipal separate school district shall be governed by a board of trustees consisting of five members, to be elected by the qualified electors of such municipal separate school district from the district at large in the manner provided by Sections 37-7-209 through 37-7-219, and all duties imposed upon the county superintendent of education by said sections with reference to such elections shall be imposed upon and performed by the superintendent of the municipal separate school district. However, the first board of trustees of such special municipal separate school district shall be appointed in the following manner. The governing authorities of the municipality shall appoint three trustees, and such appointments shall be made so that one trustee shall be appointed to serve until the first Saturday of March following such appointment, one for two years longer, and one for four years longer. The board of education of the county shall appoint two trustees, such appointments to be made so that one trustee shall be appointed to serve until the first Saturday of March of the second year following such appointment, and one trustee for two years longer. After such original appointments the trustees of such a special municipal separate school district shall be elected for a term of five years, as herein provided. All such members of said board of trustees shall be residents and qualified electors of such school district. All vacancies which may occur during a term of office shall be filled by appointment by the remaining members of the board of trustees, such appointee to have the same qualifications as other members of the board. Such appointment shall be made within thirty days after the vacancy occurs. The person so appointed shall serve only until his successor shall have qualified. The successor to serve the remainder of the unexpired term shall be elected on the first Saturday of March next following the occurrence of such vacancy in the same manner as provided for by Sections 37-7-209 through 37-7-219.

**HISTORY: Codes, 1942, § 6328-84; Laws, 1956, ch. 296, § 4.**

**Cross References —** Homestead exemptions, see § 27-33-3.
Election of trustees generally, see §§ 37-7-209 through 37-7-219.

**RESEARCH REFERENCES**

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 213, 214.

## § 37-7-715. Selection of trustees by agreement of governing authorities of county and municipality generally.

Upon the organization, reorganization or reconstitution of any special municipal separate school district, the board of supervisors of the county wherein such special municipal separate school district is located and the governing authorities of the municipality may, by an order spread upon their minutes within sixty days after such organization, reorganization or reconstitution shall have become final, expressing an agreement between both such governing authorities, choose to constitute the board of such special municipal separate school district under one of the optional methods of organization set out in Section 37-7-717. In the event that both the governing authorities hereinabove referred to shall enter such an order within said period, then the said board of trustees shall be thereafter constituted and selected according to the terms of such agreement, provided such agreement is in conformity with the terms of Section 37-7-717. It is further expressly provided that irregularities of a procedural nature in the adoption of such orders shall not affect the validity of the same or the validity of any acts of the board of trustees which may be constituted by virtue thereof.

**HISTORY: Codes, 1942, § 6328-85; Laws, 1956, ch. 296, § 5.**

**Cross References —** Homestead exemptions, see § 27-33-3.
Abolition, reorganization or alteration of district, see § 37-7-103 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

Changing the method of the selection of trustees of a school district organized pursuant to § 37-7-717 from subsection (a) to subsection (b) is authorized only when the school district is reorganized or reconstituted pursuant to §§ 37-7-103 et seq. Smith, June 14, 2002, A.G. Op. #02-0220.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 213, 214.

## § 37-7-717. Optional methods of selecting trustees pursuant to agreement.

Upon complying with the terms and provisions of Section 37-7-715, hereof, the board of supervisors of any county wherein there is a special municipal separate school district and the governing authorities of the municipality may provide that the board of trustees of such special municipal separate school district shall be organized and constituted in one of the following manners:

(a) The said board may consist of five members, all of whom shall be bona fide residents of and qualified electors of such school districts and who shall be appointed by either the board of supervisors, the governing authorities of the municipality, or by both of said bodies in such proportion as the governing bodies may agree upon. The first such board shall be appointed so that one trustee shall be appointed to serve for one year, one for one year longer, one for two years longer, one for three years longer, and one for four years longer. Upon the expiration of each such original term, each appointment shall be for five years and shall be made by the authority making the original appointment. In case of the occurrence of a vacancy, the authority which made the appointment of the trustee responsible for such vacancy shall appoint a successor to serve the remainder of the term of such trustee.

(b) In case of a special municipal separate school district which embraces the entire county, the board of trustees may be constituted and selected in accordance with the terms and provisions of Sections 37-7-707 through 37-7-711, with the exception that one member of such board shall be elected by each supervisors district and shall be a resident and qualified elector of the district from which he is elected.

(c) In case of a special municipal separate school district embracing the entire county, the board of trustees may be constituted and selected in accordance with the terms and provisions of Section 37-7-713.

**HISTORY: Codes, 1942, § 6328-86; Laws, 1956, ch. 296, § 6.**

**Cross References —** Homestead exemptions, see § 27-33-3.

### OPINIONS OF THE ATTORNEY GENERAL

Adoption of joint resolution by municipal and county governing authorities evidencing agreement between two boards that county board of supervisors will now make all appointments of trustees of school district, would be sufficient to effect said change. Brown, Sept. 19, 1990, A.G. Op. #90-0689.

## §§ 37-7-719 and 37-7-721. Repealed.

Repealed by Laws, 1986, ch. 492, § 48, eff from and after July 1, 1987.
§ 37-7-719. [Codes, 1942, § 6328-87; Laws, 1956, ch. 296, § 7]
§ 37-7-721. [Codes, 1942, § 6328-89; Laws, 1956, ch. 296, § 9]

**Editor's Notes —** Former § 37-7-719 provided for powers and duties of the board of trustees of special municipal school districts.

Former § 37-7-721 provided for reimbursement of members of board of trustees of special municipal separate school districts for travel expenses.

## § 37-7-723. District board of trustees to supersede county board of education in county-wide districts.

In any county in which there exists a special municipal separate school district which embraces and includes the entire county, the county board of education of such county shall be forthwith discontinued and abolished. All of the duties provided by law which would otherwise devolve upon the county board of education of such county shall be performed and discharged by the board of trustees of the special municipal separate school district which for such purpose, shall have and be vested with all power, authority and duties now conferred by law upon the county board of education.

**HISTORY: Codes, 1942, § 6328-112; Laws, 1958, ch. 319, § 2, eff from and after passage (approved May 6, 1958).**

**Cross References —** Homestead exemptions, see § 27-33-3.

Establishment of county board of education in every county, see § 37-5-1.

Selection, term and qualifications of trustees of municipal separate school districts, see § 37-7-203.

Selection of trustees of county-wide district where majority of inhabitants reside within city limits, see § 37-7-703.

Selection of trustees of county-wide district where majority of inhabitants reside outside city limits, see § 37-7-705.

## § 37-7-725. District superintendent to supersede county superintendent of education in county-wide districts.

When a special municipal separate school district embraces and includes all of the territory of the county, then the office of county superintendent of education in such county shall be abolished and discontinued in such county and no county superintendent of education of such county shall be elected at any ensuing elections. In such an event, the superintendent of the special municipal separate school district shall thereafter perform and discharge all duties which would otherwise devolve upon the county superintendent of education under the provisions of any applicable statute of this state, and, for such purpose, the superintendent of such special municipal separate school district shall have and be vested with all power and authority conferred by law upon such county superintendents of education.

**HISTORY: Codes, 1942, § 6328-113; Laws, 1958, ch. 319, § 3, eff from and after passage (approved May 6, 1958).**

**Cross References —** Homestead exemptions, see § 27-33-3.
County superintendent of education; election; term of office, see § 37-5-61.

### §§ 37-7-727 through 37-7-745. Repealed.

Repealed by Laws, 1986, ch. 492, § 48, eff from and after July 1, 1987.

§§ 37-7-727 through 37-7-745. [Codes, 1942, §§ 6411-10.3, 6328-92 to 6328-94, 6328-111, 6328-114; Laws, 1956, ch. 296, §§ 12-14; Laws, 1958, ch. 319, §§ 1, 4; Laws, 1968, ch. 422, §§ 1-3; Laws, 1977, ch. 486, § 28; Laws, 1983, ch. 471, § 22].

**Editor's Notes —** Former §§ 37-7-727 through 37-7-745 pertained to various powers, duties, and functions of the board of trustees of special municipal separate school districts, administrative expenses, funds, ad valorem taxes, and district tax levies.

## ARTICLE 15.

## LINE SCHOOL DISTRICTS [REPEALED].

Sec.
37-7-801 through 37-7-811. Repealed.

### §§ 37-7-801 through 37-7-811. Repealed.

Repealed by Laws, 1986, ch. 492, § 49, eff from and after July 1, 1987.

§§ 37-7-801 through 37-7-811. [Codes, 1942, §§ 6328-51 to 6328-53, 6328-55 to 6328-57; Laws, 1953, Ex Sess, ch. 25, §§ 1-3, 5-7; Laws, 1954, ch. 259, § 2].

**Editor's Notes —** Former §§ 37-7-801 through 37-7-811 related to the duties and functions of line school districts.

## ARTICLE 17.

## ISOLATED SCHOOL DISTRICTS [REPEALED].

Sec.
37-7-901 through 37-7-911. Repealed.

## §§ 37-7-901 through 37-7-911. Repealed.

Repealed by Laws, 1986, ch. 492, § 50, eff from and after July 1, 1987.

§§ 37-7-901 through 37-7-911. [Codes, 1942, §§ 6248-21 to 6248-26; Laws, 1956, ch. 271, §§ 1-6].

**Editor's Notes** — Former §§ 37-7-901 through 37-7-911 related to isolated school districts.

# ARTICLE 19.

# COMMISSION ON SCHOOL DISTRICT EFFICIENCY.

Sec.
37-7-1001. Establishment; purpose; findings and recommendations; membership.

## § 37-7-1001. Establishment; purpose; findings and recommendations; membership.

The State Board of Education is hereby authorized to establish a Standing Commission on School District Efficiency. The commission shall meet and study the operations, rules, policies and regulations in school districts on an ongoing basis for the purpose of identifying opportunities to increase efficiencies, and to determine appropriate efficiency standards that should be considered for accreditation standards. The commission shall report annually its findings and recommendations to the State Board of Education, and the State Board of Education may make its report and recommendations annually to the Legislature seeking legislative support to achieve efficiencies in school districts. In establishing the Standing Commission on School District Efficiency the State Board of Education shall provide that the membership not be less than six (6) members. The State Board of Education shall appoint school district employees proficient in the areas of fiscal management, procurement, data processing or other fields of school business, with at least one (1) member being appointed from each congressional district. The commission shall meet on a date designated by the State Superintendent of Education and organize by selecting a chairman and adopt rules for conducting business. Members of the commission shall serve without compensation, but may be reimbursed for necessary travel expenses from any available funds for attending official meetings of the commission. The State Department of Education shall provide necessary administrative and clerical support for the functions of the commission.

**HISTORY: Laws, 2012, ch. 543, § 1, eff from and after July 1, 2012.**

# CHAPTER 9.

# DISTRICT SUPERINTENDENTS, PRINCIPALS, TEACHERS, AND OTHER EMPLOYEES

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## IN GENERAL

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| 37-9-3. | Employment of non-instructional employees. |
| 37-9-4. | Compensation of attorney employed by school board who is a member of the Legislature. |
| 37-9-5. | Repealed. |
| 37-9-7. | Employment of unlicensed superintendent, principal or teacher; conditional contracts; expiration of license during term of contract. |
| 37-9-8. | Repealed. |
| 37-9-9. | Rules and regulations governing issuance of teachers' certificates; compensation of teachers serving special needs of district. |
| 37-9-11. | Testing of applicants for teacher licensure. |
| 37-9-12. | Referendum on continuation or abolition of office of county superintendent of education [Repealed effective January 1, 2019]. |
| 37-9-13. | Selection of superintendent of school district; qualifications of superintendent. |
| 37-9-14. | General duties and powers of superintendent of school district. |
| 37-9-15. | Selection of assistant superintendents and principals; interim conservators. |
| 37-9-16. | Repealed. |
| 37-9-17. | Selection of licensed employees or non-instructional employees to be employed for school year; increase in compensation of certain licensed employees; fingerprinting and criminal background checks for applicants. |
| 37-9-18. | State Board of Education to promulgate rules and regulations regarding financial reports to be submitted by superintendents to local school boards; audits of financial records; contracts; review of audit report. |
| 37-9-19. | Repealed. |
| 37-9-21. | Nepotism in hiring of superintendents, principals or licensed employees. |
| 37-9-23. | Form and execution of contracts with superintendents, principals, licensed employees, and others anticipating graduation from approved programs; conditional contracts. |
| 37-9-24. | Contracts with licensed personnel for not less than 187 employment days. |
| 37-9-25. | Contracts for periods greater than one scholastic year. |
| 37-9-27. | Bond of superintendents. |
| 37-9-29. | Repealed. |
| 37-9-31. | Bond of principals. |

Sec.
37-9-33. Amount of salaries to be in compliance with adequate education program law; annual report on number of certificated and noncertificated employees receiving salary from both a school district and Public Employees' Retirement System.
37-9-35. Employment of teachers to be paid from minimum education program funds.
37-9-36. Repealed.
37-9-37. Factors considered in fixing salaries of superintendents, principals or licensed employees.
37-9-39. Time of payment of salaries.
37-9-41. Manner of payment of salaries.
37-9-43. Payment of salary prior to execution of written contract; effect of breach of contract.
37-9-45 and 37-9-47. Repealed.
37-9-49. Deduction of dues, etc., from salaries.
37-9-51. Repealed.
37-9-53. Repealed.
37-9-55. Release from contract.
37-9-57. Effect of abandonment of employment.
37-9-59. Grounds and procedure for dismissal or suspension of licensed employee; attendance at different school system by child as ground for denying employment or reemployment of superintendent, principal or licensed employee.
37-9-61. Unlawful reprisal against school district employee for employee's involvement in effort to create or encourage participation in public charter school prohibited.
37-9-63 through 37-9-67. Repealed.
37-9-69. General duties of superintendents, principals and teachers.
37-9-70. Office for superintendent of schools.
37-9-71. Suspension or expulsion of pupils.
37-9-73. Repealed.
37-9-75. Strikes by teachers.
37-9-77. School Administrator Sabbatical Program.
37-9-79. Professional school counselors; qualifications; comprehensive counseling services; code of ethics.
37-9-81. Contracts with individuals with professional experience in academic, finance or other managerial and operational functions of schools to serve as consultants to the schools; certain individuals ineligible to serve as consultant.

## § 37-9-1. Definitions.

(1) For the purposes of this chapter, the terms "superintendent" and "principal" shall have such meaning as are ascribed to them under the provisions of Section 37-19-1. The term "licensed employee" shall mean any other employee of a public school district required to hold a valid license by the Commission on Teacher and Administrator Education, Certification and Licensure and Development. The term "non-instructional employee" shall include all employees of school districts other than superintendents, principals and licensed employees.

(2) Unless a statute in this chapter specifically is made applicable to charter schools, the provisions of this chapter only apply to public school

districts, the employees of public school districts and the public schools that are within those school districts.

**HISTORY: Codes, 1942, § 6282-01; Laws, 1953, Ex Sess, ch. 20, § 1; Laws, 1986, ch. 492, § 65; Laws, 1997, ch. 545, § 3; Laws, 2013, ch. 497, § 52, eff from and after July 1, 2013.**

**Editor's Notes —** Former § 37-19-1, referred to in this section, was repealed by Laws of 1986, Ch. 612, § 30, effective July 1, 2002. The section provided definitions for terms used in Chapter 19 of Title 37, including the terms "principal" and "superintendent," which were defined as follows:

"(c) The term "principal" shall mean the head of an attendance center or division thereof;

"(d) The term "superintendent" shall mean the head of a school district."

**Cross References —** Commission on Teacher and Administrator Education, Certification and Licensure and Development membership, powers and duties, see § 37-3-2.

Procedural requirements to be met prior to issuance of arrest warrant for teacher charged with committing crime during performance of official duties, see § 99-3-28.

## JUDICIAL DECISIONS

**1. In general.**

Public relations consultants are "non-instructional personnel" as defined in § 37-9-1 and, therefore, a school district's employment of consultants as non-instructional personnel does not violate statutory law. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

## OPINIONS OF THE ATTORNEY GENERAL

Since the statutory employment scheme requires only that specified, licensed administrators and employees serve under contract, it is within the discretion of a school district to employ tutors, substitute teachers and other temporary support personnel without the use of a written contract. Barnett, April 24, 1998, A.G. Op. #98-0194.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 158 et seq.

**Practice References.**

Education Law (Matthew Bender).

## § 37-9-3. Employment of non-instructional employees.

Except as otherwise provided in Section 37-167-1, within the limits of the available funds, the superintendent of schools of a school district shall recommend to the school board thereof all noninstructional employees to be employed and may prescribe the duties thereof. Compensation for such employees may be paid from any lawful funds.

**HISTORY: Codes, 1942, § 6282-02; Laws, 1953, Ex Sess, ch. 20, § 2; Laws, 1986, ch. 492, § 66; Laws, 1987, ch. 307, § 11; Laws, 2004, ch. 357, § 1; Laws, 2010, ch. 540, § 3, eff from and after July 1, 2010.**

**Editor's Notes —** Former § 37-165-27 provided that this section would stand repealed on July 1, 2016. Section 37-165-27 was repealed by § 92 of Chapter 497, Laws of 2013, effective July 1, 2013.

Former § 37-167-1, referenced in this section, established the "New Start School Program" and was repealed by Laws of 2017, ch. 343, § 1, effective from and after July 1, 2017.

**Cross References —** Prohibition against denying employment on ground that child of applicant does not attend school system in which employment or reemployment is sought, see § 37-9-59.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Employment of public relations consultants.

**1. In general.**

A school board has the authority to employ and fix the duties and compensation of non-instructional personnel. Yarbrough v. Camphor, 645 So. 2d 867, 1994 Miss. LEXIS 450 (Miss. 1994).

**2. Employment of public relations consultants.**

Public relations consultants are "non-instructional personnel" as defined in § 37-9-1 and, therefore, a school district's employment of consultants as non-instructional personnel does not violate statutory law. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

A school board's expenditure of taxpayer funds for a contract with public relations consultants who were hired to promote the passage of a bond referendum for new school buildings was an unauthorized expenditure of public funds since a public entity may not use public funds to actively campaign for a favored position on a bond issue; moreover, this expenditure involved more than a mistaken exercise of authority, as the entire objective was unauthorized and the school children were wrongfully deprived of the benefit of these funds, and therefore board members who voted in favor of the contract would be personally liable for the amount of the unlawful expenditure. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

## OPINIONS OF THE ATTORNEY GENERAL

In regard to personnel matters, Sections 37-9-3, 37-7-301(w), 37-9-15, 37-9-17, 37-9-105 and 37-9-59, with the exception of the step-aside provisions of 37-9-17, require the recommendation of the superintendent before the board may act upon the employment of non-instructional employees and certificated employees. Hand, February 1, 1995, A.G. Op. #95-0008.

The school board of a county school district does not have authority to employ or re-employ a non-instructional employee if the superintendent does not recommend the employee to the board. Boyles, Mar. 2, 2001, A.G. Op. #01-0116.

Subject to any lawfully adopted policies or preexisting contractual obligations, a school board in its discretion may reassign a nonlicensed employee to a position with lesser duties and responsibilities and may also reduce the salary of the employee. Smith, Mar. 19, 2004, A.G. Op. 04-0114.

There is no specific statutory authority for a school board to dismiss non-licensed employees on its own initiative. That authority has been granted specifically to the superintendent in § 37-9-14 (2)(y). Rhodes, Nov. 5, 2004, A.G. Op. 04-0509.

Section 37-9-3 does not require that school district noninstructional personnel be approved for employment annually. Rhodes, Apr. 28, 2006, A.G. Op. 06-0133.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 182 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 433-436, 626-630, 726-729.

## § 37-9-4. Compensation of attorney employed by school board who is a member of the Legislature.

The compensation of any attorney employed by a school board who is a member of the Legislature shall be paid only from funds available to the school district that are not appropriated by the Legislature.

**HISTORY: Laws, 2004, ch. 583, § 2, eff from and after June 30, 2004.**

**Editor's Notes** — A former § 37-9-4 [Laws, 1981, ch. 499, § 1; repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987] provided for employment of noncertified personnel and legal counsel.

## § 37-9-5. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.
§ 37-9-5. [Codes, 1942, § 6411-14; Laws, 1953, Ex Sess, ch. 23, § 14]

**Editor's Notes** — Former § 37-9-5 provided for the employment of truant officers, physical education teachers and visiting nurses in municipal separate school districts.

## § 37-9-7. Employment of unlicensed superintendent, principal or teacher; conditional contracts; expiration of license during term of contract.

It shall be unlawful for any superintendent, principal or teacher to be employed or contracted with to teach or serve in any of the public schools of this state who does not hold a proper license as required by the State Board of Education. However, the local school board, in its discretion, may authorize the superintendent to enter into a conditional contract with a teacher for a scholastic year, as defined in Section 37-61-1, or a portion thereof, contingent upon (1) the person's graduation from an approved teacher education program before September 1 or the issuance of a proper license by the State Board of Education before October 15 for those individuals to be employed beginning with the first term of the scholastic year, or (2) the person's graduation from an approved teacher education program before December 31 or the issuance of a proper teacher licensed by the State Board of Education before February 15 for those individuals to be employed beginning with the second term of the scholastic year. If the individual who is to be employed beginning with the first term of the scholastic year does not graduate before September 1, or if the individual who is to be employed beginning with the second term of the scholastic year does not graduate before December 31, then any conditional contract executed contingent upon the person's graduation shall be null and void on September 1 or December 31, as the case may be. If the teacher who is to be employed beginning with the first term of the scholastic year fails to obtain a valid license before October 15, or if the teacher who is to be employed beginning with the second term of the scholastic year fails to obtain a valid license before February 15, then any conditional contract executed contingent upon the issuance of a proper license shall be null and void on October 15 or February 15, as the case may be. After a contract is declared null and void, the school district shall withhold from the employee's final salary payment, or shall take such legal action as may be necessary to collect from the employee, any amounts above the amount paid to substitute teachers in that district which were paid to the employee before the contract conditioned upon the person's graduation or being issued a proper license is voided. If the license held by any superintendent, principal or teacher expires during the life of any such contract and is not renewed, then such contract shall be null and void upon the expiration of such license which is not renewed.

**HISTORY: Codes, 1942, § 6282-03; Laws, 1953, Ex Sess, ch. 20, § 3; Laws, 1997, ch. 545, § 4; Laws, 1998, ch. 408, § 1, eff from and after passage (approved March 20, 1998).**

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

Powers and duties of the commission on teacher and administrator education, certification and development, see § 37-3-2.

## RESEARCH REFERENCES

**ALR.**

Revocation of teacher's certificate for moral unfitness. 97 A.L.R.2d 827.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 A.L.R.3d 754.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 160, 161.

**CJS.**

78 C.J.S., Schools and School Districts §§ 412 et seq.

## § 37-9-8. Repealed.

Repealed by Laws, 1997, ch. 545, § 29, eff from and after passage (approved April 10, 1997).

[Laws, 1991, ch. 502, § 2; Laws, 1993, ch. 602, § 1; Laws, 1995, ch. 448, § 2].

**Editor's Notes** — Former § 37-9-8 provided certain academic requirements for teacher education programs.

## § 37-9-9. Rules and regulations governing issuance of teachers' certificates; compensation of teachers serving special needs of district.

No teacher shall experience a reduction in salary for the purpose of serving the special teaching needs of their public school district. All teachers teaching in areas of need as requested by their school district shall receive a salary in an amount commensurate with their highest level of certification and licensure.

Each application or filing made under this section shall include the Social Security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

**HISTORY: Codes, 1942, § 6282-27; Laws, 1953, Ex Sess, ch. 20, § 27; Laws, 1992, ch. 445, § 1; Laws, 1994, ch. 581, § 15; Laws, 1997, ch. 545, § 5; Laws, 1997, ch. 588, § 16, eff from and after July 1, 1997.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph. The subsection number "(3)" that had appeared at the beginning of the paragraph was deleted (the section contained a (3), but not a (1) or (2)). The Joint Committee ratified the correction at its April 28, 1999 meeting.

Section 5 of ch. 545 Laws of 1997, amended this section, effective from and after passage (approved April 10, 1997). Section 16 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 16 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

**Cross References** — Commission on teacher and administrator education, certification and development; membership; powers and duties, see § 37-3-2.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 160, 161.

**CJS.**

78 C.J.S., Schools and School Districts § 412.

## § 37-9-11. Testing of applicants for teacher licensure.

The State Board of Education is authorized and directed to require tests or an examination of achievement as one of the requirements for the issuance of public school professional licenses issued after July 1, 1997, to any person applying for the first time for a professional license.

Scores on said test or tests shall be made a part of the record of the applicant and maintained in the files of the Office of Teacher Certification and Licensure Division of the State Department of Education.

The State Board of Education is further authorized at its discretion to make determinations of minimum scores required of a person applying for the first time for a professional license.

The State Board of Education shall, at its discretion, determine conditions that would prevail should a person desire to take said test or tests more than once.

**HISTORY: Codes, 1942, § 6244-31; Laws, 1971, ch. 357, § 1; Laws, 1997, ch. 545, § 6, eff from and after passage (approved April 10, 1997).**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Powers and duties of the commission on teacher and administrator education, certification and development, see § 37-3-2.

**RESEARCH REFERENCES**

**ALR.**

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers. 64 A.L.R.4th 642.

## § 37-9-12. Referendum on continuation or abolition of office of county superintendent of education [Repealed effective January 1, 2019].

The qualified electors of any county having an elected county superintendent of education on July 1, 1986, shall decide at the November 1988 general election whether (a) to continue to have such office elected, or (b) to abolish such office of county superintendent of education in the county. Provided, however, that no such referendum shall be held on the office of administrative superintendent in a county having an administrative superintendent as defined in Section 37-6-3, Mississippi Code of 1972. The county board of supervisors of such counties shall publish notice of said election once a week for at least three (3) consecutive weeks prior to the November 1988 general election in at least one (1) newspaper published or circulated in such county. The proposition shall be submitted to a vote of all qualified electors residing outside the territory of any municipal separate or special municipal separate school district located within such county. Such election shall be held in the same manner as other elections are held in the county. If a majority of the qualified electors who voted in such election vote in favor of the abolition of such office, such abolishment shall be effective at the end of any regular term of office or whenever a vacancy shall occur in said office. In counties where the office of elected county superintendent of education has been abolished, it shall not be reinstated.

**HISTORY: Laws, 1986, ch. 492, § 203; Laws, 1987, ch. 307, § 6, eff from and after May 24, 1988 (the date the United States Attorney General interposed no objection to the amendment of this section).**

**Editor's Notes —** Laws of 2016, ch. 311, § 3, provides:

"SECTION 3. Effective January 1, 2019, Sections 37-5-61, 37-5-63, 37-5-65, 37-5-67, 37-5-69, 37-5-71 and 37-5-75, Mississippi Code of 1972, which provide for elected county superintendents of education, changing the position of county superintendent of education to an appointed office pursuant to petition and referendum, provide for the reestablishment of the office as an elective office, authorize the appointment of the

county superintendent of education in certain counties, provide for the selection and qualifications of elected superintendents in certain counties, and provide for the filling of vacancies in the office of elected county superintendent of education; and Section 37-9-12, Mississippi Code of 1972, which provides for a referendum on the question of retaining the elective method of choosing the county superintendent of education, are hereby repealed."

**Cross References —** County superintendent of education functions, election and term of office, see § 37-5-61 et seq.

Abolition of office of county superintendent of education in certain counties, see §§ 37-5-69, 37-7-725.

## RESEARCH REFERENCES

**ALR.**

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

## § 37-9-13. Selection of superintendent of school district; qualifications of superintendent.

(1)(a) Each school district shall have a superintendent of schools, selected in the manner provided by law. No person shall be eligible to the office of superintendent of schools unless such person shall hold a valid administrator's license issued by the State Department of Education and shall have classroom or administrative experience of not less than six (6) years which shall include at least three (3) years of administrative experience as a school building principal (a) in a school with an "A" or "B" accountability rating, or (b) in a school that increased its accountability rating by a letter grade during the period in which the principal was employed as principal at the school, or (c) in a school with comparable accountability rating or improvement in another state which shall be verified by the Mississippi Department of Education.

(b) Notwithstanding the provisions of subsection (4) of this section, no person shall be eligible to the office of superintendent of schools if the person has pled guilty to or been convicted of any state or federal offense in which he or she unlawfully took, obtained or misappropriated funds received by or entrusted to the person by virtue of his or her public office or employment.

(2) From and after January 1, 2019, in all public school districts, the local school board shall appoint the superintendent of schools of such district. At the expiration of the term of any county superintendent of education elected at the November 2015 general election, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the local school board in the manner provided in Section 37-9-25. However, in the event that a vacancy in the office of the superintendent of schools elected at the November 2015 general election shall occur before January 1, 2019, the office of superintendent of schools shall immediately become an appointed position, and the local school board shall appoint the superintendent of the school district. The superintendent of schools shall have the general powers and duties to administer the schools within his district as prescribed in Section 37-9-14 et seq., Mississippi Code of 1972.

(3) As an alternative to the qualifications prescribed in subsection (1)(a) of this section, the State Board of Education is authorized and directed to issue regulations by January 1, 2018, which include minimum credentials, educational prerequisites, and relevant best practice experience requirements that will qualify a person to serve as a superintendent without having the direct experience or certification as an educator specified in subsection (1)(a) of this section.

(4) The provisions of this section shall be applicable to any superintendent of schools selected on or after July 1, 2017, who has not previously served as a superintendent or assistant superintendent within the last five (5) years.

**HISTORY: Codes, 1942, § 6282-04; Laws, 1953, Ex Sess, ch. 20, § 4; Laws, 1960, ch. 300; Laws, 1981, ch. 499, § 3; Laws, 1986, ch. 492, § 60; Laws, 1987, ch. 307, § 7; Laws, 1988, ch. 342, § 1; Laws, 1997, ch. 545, § 7; Laws, 2016, ch. 311, § 1; Laws, 2017, ch. 301, § 1; Laws, 2017, ch. 442, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 362, § 3, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of Chapter 301, Laws of 2017, effective from and after passage (approved January 17, 2017), amended this section. Section 1 of Chapter 442, Laws of 2017, effective from and after July 1, 2017 (approved April 18, 2017), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 442, Laws of 2017, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Amendment Notes —** The 2019 amendment designated former (1) as (1)(a) and added (1)(b); and in (3), inserted "(a)" following "(1)" twice.

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Commission on teacher and administrator education, certification and licensure and development membership, powers and duties, see § 37-3-2.

County superintendent of education to have qualifications prescribed by this section, see § 37-5-71.

Abolition and discontinuance of office of county superintendent of education in certain counties where special municipal separate school district embraces entire county and devolution of his functions upon district superintendent, see § 37-7-725.

Procedures designed to insure fair dismissal of school personnel, see §§ 37-9-101 to 37-9-113.

## JUDICIAL DECISIONS

**1. In general.**

Code 1942, § 6328-54 under which county boards of education have discretion with regard to the selection of a superintendent for a line consolidated school district, was not amended by implication by Code 1942, § 6282-04, as amended, under which county boards of education have no discretion in the selection of superintendents for certain school districts, and therefore the county board of education retained discretion to approve or disapprove the nomination of a superintendent of a line consolidated school district. Belk v. Bean, 247 So. 2d 821, 1971 Miss. LEXIS 1459 (Miss. 1971).

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 160, 161, 168, 173 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 458 et seq., 537, 538.

## § 37-9-14. General duties and powers of superintendent of school district.

(1) It shall be the duty of the superintendent of schools to administer the schools within his district and to implement the decisions of the school board.

(2) In addition to all other powers, authority and duties imposed or granted by law, the superintendent of schools shall have the following powers, authority and duties:

(a) To enter into contracts in the manner provided by law with each assistant superintendent, principal and teacher of the public schools under his supervision, after such assistant superintendent, principal and teachers have been selected and approved in the manner provided by law.

(b) To enforce in the public schools of the school district the courses of study provided by law or the rules and regulations of the State Board of Education, and to comply with the law with reference to the use and distribution of free textbooks.

(c) To administer oaths in all cases to persons testifying before him relative to disputes relating to the schools submitted to him for determination, and to take testimony in such cases as provided by law.

(d) To examine the monthly and annual reports submitted to him by principals and teachers for the purpose of determining and verifying the accuracy thereof.

(e) To preserve all reports of superintendents, principals, teachers and other school officers, and to deliver to his successor or clerk of the board of supervisors all money, property, books, effects and papers.

(f) To prepare and keep in his office a map or maps showing the territory embraced in his school district, to furnish the county assessor with a copy of such map or maps, and to revise and correct same from time to time as changes in or alterations of school districts may necessitate.

(g) To keep an accurate record of the names of all of the members of the school board showing the districts for which each was elected or appointed, the post office address of each, and the date of the expiration of his term of office. All official correspondence shall be addressed to the school board, and notice to such members shall be regarded as notice to the residents of the district, and it shall be the duty of the members to notify such residents.

(h) To deliver in proper time to the assistant superintendents, principals, teachers and board members such forms, records and other supplies which will be needed during the school year as provided by law or any applicable rules and regulations, and to give to such individuals such information with regard to their duties as may be required.

(i) To make to the school board reports for each scholastic month in such form as the school board may require.

(j) To distribute promptly all reports, letters, forms, circulars and instructions which he may receive for the use of school officials.

(k) To keep on file and preserve in his office all appropriate information concerning the affairs of the school district.

(*l*) To visit the schools of his school district in his discretion, and to require the assistant superintendents, principals and teachers thereof to perform their duties as prescribed by law.

(m) To observe such instructions and regulations as the school board and other public officials may prescribe, and to make special reports to these officers whenever required.

(n) To keep his office open for the transaction of business upon the days and during the hours to be designated by the school board.

(o) To make such reports as are required by the State Board of Education.

(p) To make an enumeration of educable children in his school district as prescribed by law.

(q) To keep in his office and carefully preserve the public school record provided, to enter therein the proceedings of the school board and his decision upon cases and his other official acts, to record therein the data required from the monthly and term reports of principals and teachers, and from the summaries of records thus kept.

(r) To delegate student disciplinary matters to appropriate school personnel.

(s) To make assignments to the various schools in the district of all noninstructional and nonlicensed employees and all licensed employees, as provided in Sections 37-9-15 and 37-9-17, and to make reassignments of such employees from time to time; however, a reassignment of a licensed employee may only be to an area in which the employee has a valid license issued by the State Department of Education. Upon request from any employee transferred, such assignment shall be subject to review by the school board.

(t) To employ substitutes for licensed employees, regardless of whether or not such substitute holds the proper license, subject to such reasonable rules and regulations as may be adopted by the State Board of Education.

(u) To comply in a timely manner with the compulsory education reporting requirements prescribed in Section 37-13-91(6).

(v) To perform such other duties as may be required of him by law.

(w) To notify, in writing, the parent, guardian or custodian, the youth court and local law enforcement of any expulsion of a student for criminal activity as defined in Section 37-11-29.

(x) To notify the youth court and local law enforcement agencies, by affidavit, of the occurrence of any crime committed by a student or students upon school property or during any school-related activity, regardless of location and the identity of the student or students committing the crime.

(y) To employ and dismiss noninstructional and nonlicensed employees as provided by law.

(z) To temporarily employ licensed and nonlicensed employees to fill vacancies which may occur from time to time without prior approval of the board of trustees, provided that the board of trustees is notified of such employment and the action is ratified by the board at the next regular meeting of the board. A school district may pay a licensed employee based on the same salary schedule as other contracted licensed employees in the district until school board action, at which time a licensed employee approved by the school board enters a contract. If the board, within thirty (30) days of the date of employment of such employee under this subsection, takes action to disapprove of the employment by the superintendent, then the employment shall be immediately terminated without further compensation, notice or other employment rights with the district. The terminated employee shall be paid such salary and fringe benefits that such employee would otherwise be entitled to from the date of employment to the date of termination for days actually worked.

(3) All funds to the credit of a school district shall be paid out on pay certificates issued by the superintendent upon order of the school board of the school district properly entered upon the minutes thereof, and all such orders shall be supported by properly itemized invoices from the vendors covering the materials and supplies purchased. All such orders and the itemized invoices supporting same shall be filed as a public record in the office of the superintendent for a period of five (5) years. The superintendent shall be liable upon his official bond for the amount of any pay certificate issued in violation of the provisions of this section. The school board shall have the power and authority to direct and cause warrants to be issued against such district funds for the purpose of refunding any amount of taxes erroneously or illegally paid into such fund when such refund has been approved in the manner provided by law.

(4) The superintendent of schools shall be special accounting officer and treasurer with respect to any and all district school funds for his school district. He or his designee shall issue all warrants without the necessity of registration thereof by the chancery clerk. Transactions with the depositories and with the various tax collecting agencies which involve school funds for such school district shall be with the superintendent of schools, or his designee.

(5) The superintendent of schools will have no responsibility with regard to agricultural high school and junior college funds.

All agricultural high school and junior college funds shall be handled and expended in the manner provided for in Sections 37-29-31 through 37-29-39.

(6) It shall be the duty of the superintendent of schools to keep and preserve the minutes of the proceedings of the school board.

(7) The superintendent of schools shall maintain as a record in his office a book or a computer printout in which he shall enter all demands, claims and accounts paid from any funds of the school district. The record shall be in a form to be prescribed by the State Auditor. All demands, claims and accounts filed shall be preserved by the superintendent of schools as a public record for a period of five (5) years. All claims found by the school board to be illegal shall be rejected or disallowed. To the extent allowed by board policy, all claims

which are found to be legal and proper may be paid and then ratified by the school board at the next regularly scheduled board meeting, as paid by the superintendent of schools. All claims as to which a continuance is requested by the claimant and those found to be defective but which may be perfected by amendment shall be continued. The superintendent of schools shall issue a pay certificate against any legal and proper fund of the school district in favor of the claimant in payment of claims. The provisions of this section, however, shall not be applicable to the payment of salaries and applicable benefits, travel advances, amounts due private contractors or other obligations where the amount thereof has been previously approved by a contract or by an order of the school board entered upon its minutes, or paid by board policy, or by inclusion in the current fiscal year budget, and all such amounts may be paid by the superintendent of schools by pay certificates issued by him against the legal and proper fund without allowance of a specific claim therefor as provided in this section, provided that the payment thereof is otherwise in conformity with law.

**HISTORY: Laws, 1986, ch. 492, § 61; Laws, 1987, ch. 307, § 8; Laws, 1991, ch. 539, § 1; Laws, 1994, ch. 636, § 1; Laws, 1994, ch. 607, § 13; Laws, 1995, ch. 426, § 1; Laws, 1999, ch. 358, § 1; Laws, 2005, ch. 394, § 2; Laws, 2008, ch. 383, § 1, eff from and after passage (approved Mar. 31, 2008).**

**Joint Legislative Committee Note —** Paragraph (w) of subsection (2) of this section contained an incorrect reference to "Section 37-11-92." In 2007, the reference was changed to "Section 37-11-29" at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The correction was ratified by the Joint Committee, pursuant to Section 1-1-109, at the Committee's August 5, 2008, meeting.

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Powers and duties of superintendent of school district to select assistant superintendents and principals, see § 37-9-15.

Textbooks generally, see § 37-43-1 et seq.

Youth court generally, see § 43-21-101 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Illustrative cases.

**1. In general.**

Circuit court erred in denying a school district's motion for summary judgment as to a mother's negligence claim because the Mississippi Tort Claims Act, Miss Code Ann. § 11-46-9(1)(d), operated to shield the district and its coaches and employees from any liability for the death of her son, who allegedly suffered from heat stroke during football practice, since nothing in the record indicated that the district and/or the football coaches, or any district employee or staff member, violated any statute, ordinance, or regulation concerning conducting football practice, and the conduct at issue constituted discretionary behavior; Miss. Code Ann. § 37-9-14 sets forth the responsibilities and powers of the superintendent, and in no way does this statute imply any duties pertaining to the oversight of athletic practices. Covington County Sch. Dist. v. Magee, 29 So. 3d 1, 2010 Miss. LEXIS 45 (Miss. 2010).

Mississippi Education Employment Procedures Law did not apply to a case where a former employee was transferred to an alternative school after teaching biology at a junior high and high school because contract that the employee signed stipulated that the school district had the authority to transfer her, a reassignment was permitted under Miss. Code Ann. § 37-9-14(2)(s), and the reassignment was according to educator licensure guidelines in Mississippi. Winters v. Calhoun County Sch. Dist., 990 So. 2d 238, 2008 Miss. App. LEXIS 193 (Miss. Ct. App. 2008).

Superintendent received the photocopy of the claimed weapon and made the determination that the nail file device was a knife and the student was to be suspended; even if the school district could have placed its power to make the ultimate decision regarding the disciplinary action in the superintendent, her decision to expel the student by relying solely upon the report from the Appeals Committee and a faxed photocopy of an item that did not match the description given by a witness was arbitrary and capricious. Hinds County Sch. Dist. Bd. of Trs. v. R.B., 10 So. 3d 495, 2007 Miss. App. LEXIS 626 (Miss. Ct. App. 2007), rev'd, 10 So. 3d 387, 2008 Miss. LEXIS 606 (Miss. 2008).

"Nonrenewal" is not defined in Miss. Code Ann. § 37-9-17, and there is no basis from which to infer that the mere changing of terms in the contract is in and of itself a nonrenewal. However, whether the teacher incurs a demotion, whether there is less pay or less responsibility in the new position, whether it requires less skill, or is otherwise a diminishment of position are factors to consider. Bd. of Educ. v. Fisher, 874 So. 2d 1019, 2004 Miss. App. LEXIS 503 (Miss. Ct. App. 2004).

**2. Illustrative cases.**

Caucasian retired school principal's equal protection claim based on constructive discharge against superintendents was held in abeyance because there was a question as to whether their liability was subject to qualified immunity; as administrators, they had wide responsibilities involving the allocation of district funds so they were "policymakers." Idom v. Natchez-Adams Sch. Dist., 115 F. Supp. 3d 792, 2015 U.S. Dist. LEXIS 91321 (S.D. Miss. 2015).

Where a teacher was terminated for accessing confidential student information, the teacher's malicious interference with employment claim survived because, regarding presuit notice under the Mississippi Torts Claims Act, the superintendent did not address the Zumwalt decision in rebuttal or attempt to distinguish it, and the determination of whether the superintendent acted in bad faith and "without right or justifiable cause" presented a fact issue. Dearman v. Stone County Sch. Dist., — F. Supp. 3d —, 2014 U.S. Dist. LEXIS 37489 (S.D. Miss. Mar. 21, 2014).

## OPINIONS OF THE ATTORNEY GENERAL

Reassignment of certificated employees is not subject to approval by school board, but such assignments are subject to school board review if certificated employee requests review; inherent in board's authority to make such review is authority to overrule assignment. Bishop, Dec. 9, 1992, A.G. Op. #92-0935.

Travel expenses of non-school board personnel requires the approval of the school board pursuant to Sections 37-9-14 (7) and 37-7-301(o). Hand, February 1, 1995, A.G. Op. #95-0008.

The school board must be allowed to reject or approve all claims before pay certificates are issued by the superintendent of education; however, pay certificates may be issued by the superintendent without prior approval of the school board on the payment of specific claims in accordance with the exceptions set out in subsection (7) of this section. Henderson, Dec. 6, 2002, A.G. Op. #02-0658.

All claims that do not fall within the purview of the exceptions provided in subsection (7) of this section are to be presented to the school board for payment or rejection. Adams, Apr. 4, 2003, A.G. Op. 03-0088.

A local school board has the authority to establish policies and procedures regarding Sections 37-9-14 and 37-11-29; however, these policies and procedures may not be in conflict with the requirements of these two statutes. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

An arrest is not a prerequisite to making an immediate report to local law enforcement. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

The reporting of unlawful activity to a district employed law enforcement officer does not meet the reporting criteria for Sections 37-9-14 and 37-11-29. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

When a superintendent has a reasonable belief that an unlawful act has occurred on educational property or during a school related activity, a report must be made to local law enforcement at once and without delay. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

Subject to any lawfully adopted policies or preexisting contractual obligations, a school board in its discretion may reassign a nonlicensed employee to a position with lesser duties and responsibilities and may also reduce the salary of the employee. Smith, Mar. 19, 2004, A.G. Op. 04-0114.

There is no specific statutory authority for a school board to dismiss non-licensed employees on its own initiative. That authority has been granted specifically to the superintendent in subdivision (2)(y) of this section. Rhodes, Nov. 5, 2004, A.G. Op. 04-0509.

A board of education does not have the authority to direct a superintendent of education as to the person who shall keep notes from which minutes of board meetings are prepared. Lee, July 1, 2005, A.G. Op. 05-0603.

Section 37-9-14 (2)(y) does not permit the superintendent of education to renew an "At-Will Agreement" for coaches and to make salary payments according to the Agreement for the ensuing school year without affirmative action by the board of education. Kopf, Aug. 2, 2005, A.G. Op. 05-0349.

## § 37-9-15. Selection of assistant superintendents and principals; interim conservators.

No later than February 15 of each year, the superintendent of each school district, or such other person designated or authorized by the school board, shall recommend to the school board thereof the assistant superintendents and principals to be employed for each of the schools of the districts except in the case of those assistant superintendents and principals who have been previously employed and who have a contract valid for the ensuing scholastic year. Unless good reason to the contrary exists, the school board shall approve and authorize the employment of the assistant superintendents and principals so recommended. If, for any reason, the school board shall decline to approve an assistant superintendent or principal so recommended, the superintendent or the board's designee shall make additional recommendations for the place or places to be filled.

When the assistant superintendents and principals of the schools have been recommended and approved as provided in the preceding paragraph, the superintendent of such district shall enter into proper contracts with them. At a subsequent meeting he shall report same to the school board and such shall be entered in the minutes.

An interim conservator appointed pursuant to the provisions of Section

37-17-6(15)(a) shall not be required to comply with the time limitations prescribed in this section for recommending and employing assistant superintendents and principals.

**HISTORY: Codes, 1942, §§ 6282-05, 6282-06; Laws, 1953, Ex Sess, ch. 20, §§ 5, 6; Laws, 1960, ch. 300, § 2; Laws, 1976, ch. 349; Laws, 1981, ch. 499, § 4; Laws, 1986, ch. 492, § 67; Laws, 1993, ch. 562, § 4; Laws, 1996, ch. 302, § 3, eff from and after passage approved (March 4, 1996).**

**Joint Legislative Committee Note.--** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the last paragraph of the section by substituting "Section 37-17-6(15)(a)" for "Section 37-17-6(14)(a)." The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Cross References —** Powers and duties of superintendent of school district to select assistant superintendents, supervisors and principals, see § 37-9-14.

Local school board not required to comply with the time limits prescribed in this section when considering a reduction in personnel or in local supplements, see § 37-9-18.

Procedures designed to insure fair dismissal of school personnel, see §§ 37-9-101 through 37-9-113.

Written notice of determination not to offer employee renewal contract, see § 37-9-105.

Authority of State Board of Education as to school districts declared to be in a state of emergency, generally, see § 37-17-6.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. "Recommended."
3. Power of county board of education.
4. Miscellaneous.
5. Standard of review.

**1. In general.**

Miss. Code § 37-9-15 and Mississippi School Employment Procedures Law (§ 37-9-101 et seq.) do not create in and of themselves protectible property interest in public school employment; § 37-9-15 does not create entitlement in nontenured teacher to reemployment unless good cause is shown by district for not accepting superintendent's recommendation of tenure, and any reason may be basis for district declining to approve re-employment of particular person. Housley v. North Panola Consolidated School Dist., 656 F. Supp. 1087, 1987 U.S. Dist. LEXIS 3290 (N.D. Miss. 1987).

**2. "Recommended."**

The word "recommend" as used in this section [Code 1942, § 6282-05] contemplates that the county superintendent will make his recommendation in writing and submit to the county board the results of an investigation into the qualifications of his nominee. Lott v. State ex rel. Kelly, 239 Miss. 96, 121 So. 2d 402 (1960).

**3. Power of county board of education.**

Financial adviser found that elimination of personnel and positions was required as part of the remedy for the school district's deficit. The school district had the authority to alter the offer of renewed employment that had already been made to the assistant principal even after the deadline that would usually apply to school employee contract renewal. McKnight v. Mound Bayou Pub. Sch. Dist., 879 So. 2d 493, 2004 Miss. App. LEXIS 223 (Miss. Ct. App. 2004).

Under mandatory requirement that a school board notify an employee of its decision within seven days after the completion of a hearing, a school board without power to rescind an order reemploying a principal more than seven days following the date of the hearing; although the superintendent had the exclusive right to recommend a principal for employment, this right was subject to the power of the school board to conduct a hearing when a principal was not recommended and to order his reemployment; however, the burden of going forward rested with the employee. Lamar County School Board v. Saul, 359 So. 2d 350, 1978 Miss. LEXIS 2260 (Miss. 1978).

While a county board of education may for good cause decline to employ as principal one recommended by the county superintendent of education, it may not appoint a principal without the superintendent's recommendation. Lott v. State ex rel. Kelly, 239 Miss. 96, 121 So. 2d 402 (1960).

Unless good cause exists for the county board's refusal to appoint as principal one recommended by the county superintendent of education, the board must make the appointment without regard to the individual preferences of the majority of its members. Lott v. State ex rel. Kelly, 239 Miss. 96, 121 So. 2d 402 (1960).

**4. Miscellaneous.**

Statute [Miss. Code Ann. § 37-9-105] setting March 1 as absolute final date when nonrenewal notice can be given to a principal applied to termination of high school principal, rather than statute [Miss. Code Ann. § 37-9-15] stating that no later than February 15, recommendation should be made to school board of principals to be employed for each of the schools of the districts. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

District court judgment for defendants in suit by principal of public school alleging that he was discharged for constitutionally impermissible reasons was affirmed on the ground that the findings of the district court were not clearly erroneous and the facts did not support plaintiff's claim. Callahan v. Price, 505 F.2d 83, 1974 U.S. App. LEXIS 5653 (5th Cir. Miss. 1974), cert. denied, 423 U.S. 927, 96 S. Ct. 273, 46 L. Ed. 2d 254, 1975 U.S. LEXIS 3166 (U.S. 1975).

**5. Standard of review.**

Decision by a school district board of trustees not to follow the superintendent's recommendation to renew a school principal's employment contract was not arbitrary and capricious because the board had a valid educational reason – the low academic performance of the principal's school – for not renewing the principal's employment contract. Giles v. Shaw Sch. Dist., 203 So. 3d 1165, 2016 Miss. App. LEXIS 736 (Miss. Ct. App. 2016).

## OPINIONS OF THE ATTORNEY GENERAL

In regard to personnel matters, Sections 37-9-3, 37-7-301(w), 37-9-15, 37-9-17, 37-9-105 and 37-9-59, with the exception of the step-aside provisions of 37-9-17, require the recommendation of the superintendent before the board may act upon the employment of non-instructional employees and certificated employees. Hand, February 1, 1995, A.G. Op. #95-0008.

A school board is allowed by § 37-9-15 to designate a person other than the superintendent to recommend employment of persons as principals and assistant superintendents. Brown, Sept. 20, 2002, A.G. Op. #02-0418.

A school superintendent may not reassign a teacher to the Title I coordinator position without school board approval. Furthermore, school board approval is required before the superintendent's or other designated person's recommendation for the Title I coordinator may be employed pursuant to this section. Dearman, Feb. 13, 2004, A.G. Op. 04-0300.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 160, 161, 168, 173 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 450 et seq.

**Law Reviews.**

1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

## § 37-9-16. Repealed.

Repealed by Laws of 2009, ch. 516, § 10, effective on or after passage (April 8, 2009).

§ 37-9-16. [Laws, 2008, ch. 527, § 1, eff ____________ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section).]

**Editor's Notes** — Former § 37-9-16 provided for the removal of appointed or elected school superintendents of underperforming school districts under certain circumstances.

Laws of 2008, ch. 527, did not receive preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

## § 37-9-17. Selection of licensed employees or non-instructional employees to be employed for school year; increase in compensation of certain licensed employees; fingerprinting and criminal background checks for applicants.

(1) On or before April 1 of each year, the principal of each school shall recommend to the superintendent of the local school district the licensed employees or noninstructional employees to be employed for the school involved except those licensed employees or noninstructional employees who have been previously employed and who have a contract valid for the ensuing scholastic year. If such recommendations meet with the approval of the superintendent, the superintendent shall recommend the employment of such licensed employees or noninstructional employees to the local school board, and, unless good reason to the contrary exists, the board shall elect the employees so recommended. If, for any reason, the local school board shall decline to elect any employee so recommended, additional recommendations for the places to be filled shall be made by the principal to the superintendent and then by the superintendent to the local school board as provided above. The school board of any local school district shall be authorized to designate a personnel supervisor or another principal employed by the school district to recommend to the superintendent licensed employees or noninstructional employees; however, this authorization shall be restricted to no more than two (2) positions for each employment period for each school in the local school district. Any noninstructional employee employed upon the recommendation of a personnel supervisor or another principal employed by the local school district must have been employed by the local school district at the time the superintendent was elected or appointed to office; a noninstructional employee employed under this authorization may not be paid compensation in excess of the statewide average compensation for such noninstructional position with comparable experience, as established by the State Department of Education.

The school board of any local school district shall be authorized to designate a personnel supervisor or another principal employed by the school district to accept the recommendations of principals or their designees for licensed employees or noninstructional employees and to transmit approved recommendations to the local school board; however, this authorization shall be restricted to no more than two (2) positions for each employment period for each school in the local school district.

When the licensed employees have been elected as provided in the preceding paragraph, the superintendent of the district shall enter into a contract with such persons in the manner provided in this chapter.

If, at the commencement of the scholastic year, any licensed employee shall present to the superintendent a license of a higher grade than that specified in such individual's contract, such individual may, if funds are available from adequate education program funds of the district, or from district funds, be paid from such funds the amount to which such higher grade license would have entitled the individual, had the license been held at the time the contract was executed.

(2) Superintendents/directors of schools under the purview of the State Board of Education, the superintendent of the local school district and any private firm under contract with the local public school district to provide substitute teachers to teach during the absence of a regularly employed schoolteacher shall require, through the appropriate governmental authority, that current criminal records background checks and current child abuse registry checks are obtained, and that such criminal record information and registry checks are on file for any new hires applying for employment as a licensed or nonlicensed employee at a school and not previously employed in such school under the purview of the State Board of Education or at such local school district prior to July 1, 2000. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The fee for such fingerprinting and criminal history record check shall be paid by the applicant, not to exceed Fifty Dollars ($50.00); however, the State Board of Education, the school board of the local school district or a private firm under contract with a local school district to provide substitute teachers to teach during the temporary absence of the regularly employed schoolteacher, in its discretion, may elect to pay the fee for the fingerprinting and criminal history record check on behalf of any applicant. Under no circumstances shall a member of the State Board of Education, superintendent/director of schools under the purview of the State Board of Education, local school district superintendent, local school board member or any individual other than the subject of the criminal history record checks disseminate information received through any such checks except insofar as required to fulfill the purposes of this section. Any nonpublic school which is accredited or approved by the State Board of Education may avail itself of the procedures provided for herein and shall be responsible for the same fee

charged in the case of local public schools of this state. The determination whether the applicant has a disqualifying crime, as set forth in subsection (3) of this section, shall be made by the appropriate governmental authority, and the appropriate governmental authority shall notify the private firm whether a disqualifying crime exists.

(3) If such fingerprinting or criminal record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the new hire shall not be eligible to be employed at such school. Any employment contract for a new hire executed by the superintendent of the local school district or any employment of a new hire by a superintendent/director of a new school under the purview of the State Board of Education or by a private firm shall be voidable if the new hire receives a disqualifying criminal record check. However, the State Board of Education or the school board may, in its discretion, allow any applicant aggrieved by the employment decision under this section to appear before the respective board, or before a hearing officer designated for such purpose, to show mitigating circumstances which may exist and allow the new hire to be employed at the school. The State Board of Education or local school board may grant waivers for such mitigating circumstances, which shall include, but not be limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of the children at the school.

(4) No local school district, local school district employee, member of the State Board of Education or employee of a school under the purview of the State Board of Education shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this Section 37-9-17.

(5) The provisions of this section shall be fully applicable to licensed employees of the Mississippi School of the Arts (MSA), established in Section 37-140-1 et seq.

**HISTORY: Codes, 1942, §§ 6282-07, 6282-08, 6282-09; Laws, 1953, Ex Sess, ch. 20, §§ 7-9; Laws, 1960, ch. 300, § 3; Laws, 1981, ch. 499, § 5; Laws, 1986, ch. 492, § 68; Laws, 1989, ch. 491, § 1; Laws, 1997, ch. 545, § 8; Laws, 1998, ch. 408, § 2; Laws, 2000, ch. 486, § 1; Laws, 2000, ch. 587, § 1; Laws, 2001, ch. 500, § 12; Laws, 2002, ch. 583, § 1; Laws, 2003, ch. 546, § 7; Laws, 2004, ch. 550, § 1; Laws, 2005, ch. 538, § 1, eff from and after July 1, 2005; Laws, 2019, ch. 432, § 6, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of ch. 486, Laws of 2000, effective from and after its passage (approved April 25, 2000), amended this section. Section 1 of ch. 587, Laws of 2000, effective from and after July 1, 2000, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 587, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (3) by substituting "Section 45-33-23(h)" for "Section 45-33-23(g)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

**Amendment Notes —** The 2019 amendment added (5).

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Powers and duties of superintendent of school district to select teachers, see § 37-9-14.

Procedures designed to insure fair dismissal of school personnel, see §§ 37-9-101 through 37-9-113.

Written notice of determination not to offer employee renewal contract, see § 37-9-105.

Code of student conduct, see § 37-11-55.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Procedures related to hiring.
3. Procedures related to termination.
4. Tenure and reemployment.
5. Particular grounds for employment action.
6. Injunctive relief.

**1. In general.**

A teacher in Mississippi has no vested right to a contract of employment but may not be refused employment because of race or because of a properly exercised constitutional right. Jennings v. Meridian Municipal Separate School Dist., 337 F. Supp. 567, 1970 U.S. Dist. LEXIS 9109 (S.D. Miss. 1970), aff'd, 453 F.2d 413, 1971 U.S. App. LEXIS 6510 (5th Cir. Miss. 1971).

**2. Procedures related to hiring.**

Plaintiff who was never recommended to the school board by the superintendent and not hired by the board pursuant to any recommendation has no enforceable rights against the school board for its refusal to honor an employment contract the plaintiff signed as career awareness counselor, since the instrument which was tendered by the superintendent never ripened into an enforceable contract without board approval. Jones v. Birdsong, 530 F. Supp. 221, 1980 U.S. Dist. LEXIS 17012 (N.D. Miss. 1980), aff'd, 679 F.2d 24, 1982 U.S. App. LEXIS 19001 (5th Cir. Miss. 1982).

Where the county superintendent of education did not recommend a teacher for reemployment during coming school year, the board of education was without authority to employ her, and it was not a proper party to an action by a teacher seeking injunctive relief requiring her employment. Henry v. Coahoma County Board of Education, 246 F. Supp. 517, 1963 U.S. Dist. LEXIS 7485 (N.D. Miss. 1963), aff'd, 353 F.2d 648, 1965 U.S. App. LEXIS 3767 (5th Cir. Miss. 1965).

Failure of the minutes of the county board of education to show that a motion made and seconded, authorizing the county superintendent to enter into a contract with many persons, among them the petitioner, at stated salaries, as teachers in the public schools, was approved constituted a clerical error so that its omission was insufficient to deprive the county board's order of its undisputed purpose, and petitioner, who subsequently signed an employment contract with the county superintendent, which stated that the petitioner had been duly selected according to law, had a valid contract of employment. Cheatham v. Smith, 229 Miss. 803, 92 So. 2d 203, 1957 Miss. LEXIS 328 (Miss. 1957).

**3. Procedures related to termination.**

The notice provisions of Code § 37-9-17 and § 37-9-105, relating to termination of teaching services, are mandatory; hence, the trial court erred in dismissing an injunction suit to prevent termination of teaching services, where the superintendent of the school district failed to tender notice of termination to the teacher within seven days of April 1, 1976. McDonald v. East Jasper County School Dist., 351 So. 2d 531, 1977 Miss. LEXIS 1933 (Miss. 1977).

**4. Tenure and reemployment.**

"Nonrenewal" is not defined in Miss. Code Ann. § 37-9-17, and there is no basis from which to infer that the mere changing of terms in the contract is in and of itself a nonrenewal. However, whether the teacher incurs a demotion, whether there is less pay or less responsibility in the new position, whether it requires less skill, or is otherwise a diminishment of position are factors to consider. Bd. of Educ. v. Fisher, 874 So. 2d 1019, 2004 Miss. App. LEXIS 503 (Miss. Ct. App. 2004).

Where teacher sued the school board over nonrenewal of an earlier contract without the required notice, the issue was whether the new contract was sufficiently different from the teacher's previous contract to constitute a nonrenewal. Fact issues as to the relative status of the two positions and whether the difference in pay was solely the result of the different number of days legitimately required remained unresolved; the ultimate consideration in determining whether there was a demotion centered not just on pay, but on responsibility, or other relevant factors, such as whether one of the positions was a lesser one, so that, because fact questions remained relating to whether the teacher had sustained a true demotion without the required statutory notice, summary judgment for the school board was improper. Bd. of Educ. v. Fisher, 874 So. 2d 1019, 2004 Miss. App. LEXIS 503 (Miss. Ct. App. 2004).

Teachers working under contracts executed pursuant to the provisions of this section [Code 1942, § 6282-07] do not accumulate tenure and thus the fact that a teacher had a contract with a school for 9 years was not determinative of his right to a contract in the school system. Jennings v. Meridian Municipal Separate School Dist., 337 F. Supp. 567, 1970 U.S. Dist. LEXIS 9109 (S.D. Miss. 1970), aff'd, 453 F.2d 413, 1971 U.S. App. LEXIS 6510 (5th Cir. Miss. 1971).

Where by law teachers' contracts of employment were made only for a term of one year, and reemployment was conditioned entirely upon the recommendation of the county superintendent of education, the fact that a teacher had been previously employed for one year, or more than one year, gave her no right to employment during a succeeding school year. Henry v. Coahoma County Board of Education, 246 F. Supp. 517, 1963 U.S. Dist. LEXIS 7485 (N.D. Miss. 1963), aff'd, 353 F.2d 648, 1965 U.S. App. LEXIS 3767 (5th Cir. Miss. 1965).

**5. Particular grounds for employment action.**

In a case in which a school district (District) appealed a decision by a chancery court finding that the school board's (Board) decision not to uphold a superintendent's recommendation to renew appellee employee's contract was not supported by any substantial evidence and was arbitrary and capricious, the District argued that the Board's decision was supported by substantial evidence and was not arbitrary and capricious. The reason given for the non-renewal of the employee's contract was that the Board wanted the position to be full time in order to better serve the students; although the Board could have been more detailed in its reasoning, it had stated a good reason for the non-renewal of the employee's contract, and that was all that was required under Miss. Code Ann. § 37-9-17(1). Smith County Sch. Dist. v. Campbell, 18 So. 3d 335, 2009 Miss. App. LEXIS 646 (Miss. Ct. App. 2009).

School board policy prohibiting the hiring of any teacher whose own children did not attend the public schools did not violate teachers' First Amendment right to freedom of association or Fourteenth Amendment rights to due process and equal protection. Cook v. Hudson, 511 F.2d 744, 1975 U.S. App. LEXIS 15047 (5th Cir. Miss. 1975).

The superintendent's refusal to approve employment of a teacher because of her husband's controversial activities violated her right of free association guaranteed by the First and Fourteenth Amendments, and the school board could not remain silent and ignore the issue simply because the superintendent had not recommended the teacher for employment, but had a duty to investigate the charge and to right the wrong inflicted upon the teacher. Randle v. Indianola Municipal Separate School Dist., 373 F. Supp. 766, 1974 U.S. Dist. LEXIS 9258 (N.D. Miss. 1974).

A Negro teacher seeking injunctive relief to establish her right to reemployment and alleging that the refusal of the superintendent and board of education to reemploy her was that her views and activities on behalf of the civil rights movement were contrary to the policies and views of the defendants, thereby denying her rights under the Fifth and Fourteenth Amendments to the United States Constitution, had the burden of establishing her case by preponderance of the evidence, and where it was uncontradicted that such activities on her part had nothing to do with the fact that she was not reemployed, judgment was entered for defendants. Henry v. Coahoma County Board of Education, 246 F. Supp. 517, 1963 U.S. Dist. LEXIS 7485 (N.D. Miss. 1963), aff'd, 353 F.2d 648, 1965 U.S. App. LEXIS 3767 (5th Cir. Miss. 1965).

**6. Injunctive relief.**

County superintendent of education's failure for good cause, unconnected with civil rights activities of Negro teacher and her husband, to recommend her for reemployment afforded no basis for her action for injunctive relief seeking reinstatement. Henry v. Coahoma County Board of Education, 246 F. Supp. 517, 1963 U.S. Dist. LEXIS 7485 (N.D. Miss. 1963), aff'd, 353 F.2d 648, 1965 U.S. App. LEXIS 3767 (5th Cir. Miss. 1965).

## OPINIONS OF THE ATTORNEY GENERAL

School board may adopt rule and policy to prohibit principal from employing or recommending spouse, including spouse who teaches, in school in which the other spouse serves as principal. Farese, May 17, 1991, A.G. Op. #91-0314.

In regard to personnel matters, Sections 37-9-3, 37-7-301(w), 37-9-15, 37-9-17, 37-9-105 and 37-9-59, with the exception of the step-aside provisions of 37-9-17, require the recommendation of the superintendent before the board may act upon the employment of non-instructional employees and certificated employees. Hand, February 1, 1995, A.G. Op. #95-0008.

By refusing to bring the recommendation to a vote, the board has "declined to elect" the employee within the meaning of the statute. Lowrey, July 31, 1998, A.G. Op. #98-0441.

There is no authority for a school board to both recommend and employ teachers; in addition, only in the limited circumstances of a potential conflict of interest may a school board consider designating other school officials to make, accept, or transmit these employment recommendations to the board. Lowrey, July 31, 1998, A.G. Op. #98-0441.

The statute does not allow a school district to require a criminal record background check and/or fingerprint check of non-employees on campus, i.e., a person employed and paid by another entity but working with students on campus. Tutor, Mar. 20, 2001, A.G. Op. #01-0688.

A business manager for a school district does not fall under the purview of the statute as the statute pertains to employees of schools, not to employees of the main office of the school district. Varas, Apr. 12, 2002, A.G. Op. #02-0137.

A school board is allowed by § 37-9-17 to appoint someone other than the superintendent to accept and bring recommendations to the board for two positions, be it a licensed employee or a noninstructional employee, for each school in each employment period. Brown, Sept. 20, 2002, A.G. Op. #02-0418.

A new hire may begin performance of work assignments as required by the school district and continue the performance of these duties until such time that the new hire receives a disqualifying fingerprint or criminal record check. At such time, the local school board may declare the employment contract void. Buck, Mar. 26, 2004, A.G. Op. 04-0096.

There is no specific statutory authority for a school board to dismiss non-licensed employees on its own initiative. That authority has been granted specifically to the superintendent in § 37-9-14 (2)(y). Rhodes, Nov. 5, 2004, A.G. Op. 04-0509.

## RESEARCH REFERENCES

**ALR.**

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees. 75 A.L.R.4th 272.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 160, 161, 168, 173 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Forms 141 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 450 et seq.

**Law Reviews.**

1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

## § 37-9-18. State Board of Education to promulgate rules and regulations regarding financial reports to be submitted by superintendents to local school boards; audits of financial records; contracts; review of audit report.

(1)(a) The State Board of Education shall promulgate rules and regulations concerning the type of financial reports required to be submitted by the superintendent of schools to the local school board, and the frequency with which the reports shall be submitted. The rules and regulations promulgated by the board shall include:

(i) A requirement that the reports be listed as an agenda item for discussion at a regularly scheduled meeting of the board;

(ii) A requirement that the minutes of the board meeting reflect that the reports were discussed;

(iii) A requirement that each board member present be provided a copy of all required reports; and

(iv) A requirement that a copy of all required reports be included in the official minutes of the board meeting at which the reports were discussed.

(b) The State Board of Education is authorized to require school districts to submit any of the required reports to the State Department of Education on a basis determined by the department.

(c) Failure to comply with any of the rules and regulations established by the State Board of Education with regard to reporting requirements shall constitute a violation of the Mississippi Public School Accountability Standards.

(2) The State Auditor shall audit the financial records of school districts in accordance with Section 7-7-211(e). The State Auditor shall give reasonable notice to school districts regarding the times during which the State Auditor will perform such audits. In any fiscal year in which the State Auditor is not scheduled to perform an audit, the school board shall cause all the financial records of the superintendent of schools to be audited in accordance with Section 7-7-211(e). If the school board so elects by resolution adopted each year, the audit shall be performed by the State Auditor. Contracts for the audit of public school districts shall be let by the school board in the manner prescribed by the State Auditor. The audit shall be conducted in accordance with generally accepted auditing standards and generally accepted accounting principles, and the report presented thereon shall be in accordance with generally accepted accounting principles. If the Auditor's opinion on the general purpose financial statements is a disclaimer, as that term is defined by generally accepted auditing standards, or if the State Auditor determines the existence of serious financial conditions in the district, the State Auditor shall immediately notify the State Board of Education. Upon receiving the notice, the State Superintendent of Public Education shall direct the school district to immediately cease all expenditures until a financial advisor is appointed by the state superintendent. However, if the disclaimer is a result of conditions caused by Hurricane Katrina 2005 and applies to fiscal years 2005 and/or 2006, then the Superintendent of Education may appoint a financial advisor, and may direct the school district to immediately cease all expenditures until a financial advisor is appointed. The financial advisor shall be an agent of the State Board of Education and shall be a certified public accountant or a qualified business officer. Unless the financial advisor is an employee of the State of Mississippi, they shall be deemed an independent contractor. The financial advisor shall, with the approval of the State Board of Education:

(a) Approve or disapprove all expenditures and all financial obligations of the district;

(b) Ensure compliance with any statutes and State Board of Education rules or regulations concerning expenditures by school districts;

(c) Review salaries and the number of all district personnel and make recommendations to the local school board of any needed adjustments. Should such recommendations necessitate the reduction in local salary supplement, such recommended reductions shall be only to the extent which will result in the salaries being comparable to districts similarly situated, as determined by the State Board of Education. The local school board, in considering either a reduction in personnel or a reduction in local supplements, shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105 and, further, shall not be required to comply with Sections 37-19-11 and 37-19-7(1) in regard to reducing local supplements and the number of personnel;

(d) Work with the school district's business office to correct all inappropriate accounting procedures and/or uses of school district funds and to prepare the school district's budget for the next fiscal year;

(e) Report frequently to the State Board of Education on the corrective actions being taken and the progress being made in the school district. The financial advisor shall serve until such time as corrective action and progress is being made in such school district as determined by the State Board of Education with the concurrence of the State Auditor, or until such time as an interim conservator is assigned to such district by the State Board of Education under Section 37-17-6. The school district shall be responsible for all expenses associated with the use of the financial advisor. If the audit report reflects a failure by the school district to meet accreditation standards, the State Board of Education shall proceed under Section 37-17-6; and

(f) If a financial advisor is appointed to a school district in accordance with this subsection and it is determined by the financial advisor and/or any other official of the school district that an audit by a certified public accountant for that district was deficient in any manner, the financial advisor and/or any other official of the school district shall, within thirty (30) days, refer the matter to the State Board of Public Accountancy for follow-up and possible disciplinary action. Any disciplinary action by the State Board of Public Accountancy with regard to the certified public accountant shall, within thirty (30) days after notifying such certified public accountant, be reported to the Office of State Auditor.

(3)(a) When conducting an audit of a public school district, the State Auditor shall test to insure that the school district is complying with the requirements of Section 37-61-33(3)(a)(iii) relating to classroom supply funds. The audit must include a report of all classroom supply funds carried over from previous years. Based upon the audit report, the State Auditor shall compile a report on the compliance or noncompliance by all school districts with the requirements of Section 37-61-33(3)(a)(iii), which report must be submitted to the Chairmen of the Education and Appropriations Committees of the House of Representatives and Senate.

(b) When conducting an audit of a public school district, the State Auditor shall test to insure correct and appropriate coding at the function level. The audit must include a report showing correct and appropriate functional level expenditure codes in expenditures by the school district. Compliance standards for this audit provision shall be established by the Office of the State Auditor. Based upon the audit report, the State Auditor shall compile a report on the compliance or noncompliance by all public school districts with correct and appropriate coding at the function level, which report must be submitted to the Chairmen of the Education and Appropriations Committees of the House of Representatives and Senate.

(4) In the event the State Auditor does not perform the audit examination, then the audit report of the school district shall be reviewed by the State Auditor for compliance with applicable state laws before final payment is made on the audit by the school board. All financial records, books, vouchers,

cancelled checks and other financial records required by law to be kept and maintained in the case of municipalities shall be faithfully kept and maintained in the office of the superintendent of schools under the same provisions and penalties provided by law in the case of municipal officials.

**HISTORY: Laws, 1986, ch. 492, § 202; Laws, 1987, ch. 307, § 12; Laws, 1992, ch. 524, § 3, Laws, 1996, ch. 302, § 6; Laws, 1997, ch. 386, § 1; Laws, 2002, ch. 403, § 1; Laws, 2005, 5th Ex Sess, ch. 5, § 1; Laws, 2006, ch. 504, § 9; Laws, 2006, ch. 550, § 2; brought forward without change, Laws, 2009, ch. 345, § 10; Laws, 2009, ch. 516, § 7; Laws, 2013, ch. 566, § 3; Laws, 2016, ch. 424, § 1, eff from and after July 1, 2016.**

**Joint Legislative Committee Note —** Section 9 of ch. 504, Laws of 2006, effective from and after July 1, 2006 (approved March 28, 2006), amended this section. Section 2 of ch. 550, Laws of 2006, effective from and after July 1, 2006 (approved April 20, 2006), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 550, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 10 of ch. 345, Laws of 2009, effective from and after June 30, 2009 (approved March 16, 2009), brought this section forward without change. Section 7 of ch. 516, Laws of 2009, effective upon passage (approved April 8, 2009), amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

**Editor's Notes —** Section 7-7-2 provides that the words “State Auditor of Public Accounts,” “State Auditor” and “Auditor” appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term “State Fiscal Officer” appears in any law it shall mean “Executive Director of the Department of Finance and Administration.”

Section 37-19-11 referred to in (2)(c) was repealed by Laws of 1997, ch. 612, § 30, effective from and after July 1, 2002.

Laws of 2009, ch. 516 § 1 provides:

“SECTION 1. This act shall be entitled and may be cited as the “Children First Act of 2009.”

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Powers and duties of state superintendent of public education, see §§ 37-3-9, 37-3-11.

Requirement that school activity funds be audited as part of annual audit, see § 37-7-301.

Allocation of funds from Education Enhancement Fund for classroom supplies, instructional materials and equipment, see § 37-61-33.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

### JUDICIAL DECISIONS

**1. Nonrenewal of contract.**

Financial adviser found that elimination of personnel and positions was required as part of the remedy for the school district's deficit. The school district had the authority to alter the offer of renewed employment that had already been made to the assistant principal even after the deadline that would usually apply to school employee contract renewal. McKnight v. Mound Bayou Pub. Sch. Dist., 879 So. 2d 493, 2004 Miss. App. LEXIS 223 (Miss. Ct. App. 2004).

### OPINIONS OF THE ATTORNEY GENERAL

The statute applies to all remaining agricultural high schools. Bryant, October 30, 1998, A.G. Op. #98-0574.

A financial advisor may determine that an existing local plan for a reduction in force is inadequate to address the immediate financial need and merits suspension. Fortenberry, Nov. 27, 2006, A.G. Op. 06-0515.

Although the recommendations are not mandatory in nature, a financial advisor still retains ultimate authority to approve and disapprove all expenditures. A board's failure to follow a financial advisor's recommendations could certainly constitute a sound basis for disapproval of an expenditure or financial obligation. Fortenberry, Nov. 27, 2006, A.G. Op. 06-0515.

## § 37-9-19. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

[Codes, 1942, § 6328-54; Laws, 1953, Ex Sess, ch. 25, § 4; Laws, 1981, ch. 499, § 6]

**Editor's Notes —** Former § 37-9-19 provided for the selection of superintendents, principals, and teachers in line school districts.

## § 37-9-21. Nepotism in hiring of superintendents, principals or licensed employees.

It shall be illegal for any superintendent, principal or other licensed employee to be elected by the school board if such superintendent, principal or licensed employee is related within the third degree by blood or marriage according to the common law to a majority of the members of the school board. No member of the school board shall vote for any person as a superintendent, principal or licensed employee who is related to him within the third degree by blood or marriage or who is dependent upon him in a financial way. Any contract entered into in violation of the provisions of this section shall be null and void.

**HISTORY: Codes, 1942, § 6282-23; Laws, 1953, Ex Sess, ch. 20, § 23; Laws, 1986, ch. 492, § 69; Laws, 1997, ch. 545, § 9; Laws, 2004, ch. 357, § 2, eff from and after July 1, 2004.**

### OPINIONS OF THE ATTORNEY GENERAL

If an employee is acting in both capacities of principal and purchasing agent, one bond in the amount of $50,000 will not suffice. Such an employee must be covered for $25,000 for the duties of principal pursuant to Section 37-9-31 and $50,000 for the duties of a purchasing agent under Section 37-39-21 for a total coverage of $75,000. Middleton, April 26, 1996, A.G. Op. #96-0222.

The statute does not apply to a relationship between a superintendent and an employee. Wyly, May 12, 2000, A.G. Op. #2000-0216.

### RESEARCH REFERENCES

**ALR.**

Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

**Am. Jur.**

67B Am. Jur. 2d, Schools § 172.

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Form 73.

**CJS.**

78 C.J.S., Schools and School Districts § 409.

## § 37-9-23. Form and execution of contracts with superintendents, principals, licensed employees, and others anticipating graduation from approved programs; conditional contracts.

The superintendent shall enter into a contract with each assistant superintendent, principal, licensed employee and person anticipating graduation from an approved teacher education program or the issuance of a proper license before October 15 or February 15, as the case may be, who is elected and approved for employment by the school board. Such contracts shall be in such form as shall be prescribed by the State Board of Education and shall be executed in duplicate with one (1) copy to be retained by the appropriate superintendent and one (1) copy to be retained by the principal, licensed employee or person recommended for a licensed position contracted with. The contract shall show the name of the district, the length of the school term, the position held (whether an assistant superintendent, principal or licensed employee), the scholastic years which it covers, the total amount of the annual salary and how same is payable. The amount of salary to be shown in such contract shall be the amount which shall have been fixed and determined by the school board, but, as to the licensed employees paid in whole or in part with adequate education program funds, such salary shall not be less than that required under the provisions of Chapter 19 of this title. Beginning with the 2010-2011 school year, the contract shall include a provision allowing the school district to reduce the state minimum salary by a pro rata daily amount in order to comply with the school district employee furlough provisions of Section 37-7-308, and shall include a provision which conditions the payment of such salary upon the availability of adequate education funds provided for salaries. The contract entered into with any person recommended for a licensed position who is anticipating either graduation from an approved teacher education program before September 1 or December 31, as the case may be, or the issuance of a proper license before October 15 or February 15, as the case may be, shall be a conditional contract and shall include a provision stating that the contract will be null and void if, as specified in the contract, the contingency upon which the contract is conditioned has not occurred. If any superintendent, other than those elected, principal, licensed employee or person recommended for a licensed position who has been elected and approved shall not execute and return the contract within ten (10) days after same has been tendered to him for execution, then, at the option of the school board, the election of the licensed employee and the contract tendered to him shall be void and of no effect.

**HISTORY: Codes, 1942, § 6282-13; Laws, 1953, Ex Sess, ch. 20, § 13; Laws, 1981, ch. 499, § 7; Laws, 1986, ch. 492, § 70; Laws, 1997, ch. 545, § 10; Laws, 1998, ch. 408, § 3; Laws, 2010, ch. 486, § 6, eff from and after passage (approved Apr. 7, 2010).**

**Editor's Notes —** Former § 37-7-308, referenced in this section, related to the furlough of instructional, noninstructional and administrative employees, and wasrepealed by its own terms, effective July 1, 2012.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Board of Education generally, see § 37-1-1 et seq.

Commission on teacher and administrator education, certification and licensure and development, see § 37-3-2.

Schedule of teachers' salaries, see § 37-19-7.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Applicability of EEPL.

**1. In general.**

Plain language of Miss. Code Ann. § 37-9-23 does not prohibit superintendents or school boards from including riders or attachments in employment contracts; therefore, a rider to an employment contract for a teacher/coach did not violate § 37-9-23 based on the fact that it was not officially approved by the Mississippi Board of Education because this was not required due to the fact that it would have caused an extreme burden. Smith v. Petal Sch. Dist., 956 So. 2d 273, 2006 Miss. App. LEXIS 672 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 289 (Miss. 2007).

Language of Mississippi Code § 37-9-23 contemplates that school board take some affirmative action to void a teacher's contract once that teacher has been approved and tendered a contract of employment, and since the board failed to exercise its statutory option to void the contract, a valid contract existed between the parties for the 1982-83 school year. Noxubee County School Bd. v. Cannon, 485 So. 2d 302, 1986 Miss. LEXIS 2422 (Miss. 1986).

In view of the unconstitutionality of the opinion of the attorney general relied on by the school board, it did not afford a lawful basis for the school district to pay teachers refusing to accept reassignment as directed by federal court desegregation orders, and the school board should not only be enjoined from making further lump-sum payments to the recalcitrant teachers, but should be required to take all reasonable steps to recover the money previously paid to them. United States v. Tunica County School Dist., 323 F. Supp. 1019, 1970 U.S. Dist. LEXIS 10896 (N.D. Miss. 1970), aff'd, 440 F.2d 377, 1971 U.S. App. LEXIS 11198 (5th Cir. Miss. 1971).

**2. Applicability of EEPL.**

In a case in which the sole remaining issue was whether the Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. § 37-9-101 et seq., applied to a teacher's head basketball coach contract with a school district and both parties filed cross-motions for summary judgment, Mississippi law permitted the separate coaching contract at issue, which was not in the form set out in Miss. Code Ann. § 37-9-23 and was exempted from the EEPL. Ladner v. Hancock County Sch. Dist., 614 F. Supp. 2d 768, 2008 U.S. Dist. LEXIS 30490 (S.D. Miss.), aff'd, 292 Fed. Appx. 346, 2008 U.S. App. LEXIS 19467 (5th Cir. Miss. 2008).

### OPINIONS OF THE ATTORNEY GENERAL

In the situations as described in the statute, a school board has explicit authority to take action declaring the election and contract tendered to any superintendent, other than those elected, principal, licensed employee or person recommended for a license position be void and of no effect. Mabry, Apr. 27, 2001, A.G. Op. #01-0239.

A school district may set an annual salary contingent on final action by the Legislature and the Governor as to K-12 educational funding for Fiscal Year 2006 and issue teacher contracts pursuant to Section 37-9-23 which include this contingency. Piazza, Apr. 8, 2005, A.G. Op. 05-0157.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 169.

**CJS.**
78 C.J.S., Schools and School Districts §§ 457 et seq.

## § 37-9-24. Contracts with licensed personnel for not less than 187 employment days.

(1) Except as otherwise provided in this section, no school district shall contract with any licensed personnel for a number of employment days which shall be less than one hundred eighty-five (185).

Beginning with the 1994-1995 school year, no school district shall contract with any licensed personnel for less than one hundred eighty-seven (187) employment days.

(2) Licensed personnel may be employed for less than a full school year if the contract states the exact period of time for which the licensed person is to be employed.

**HISTORY: Laws, 1988, ch. 487, § 3; Laws, 1989, ch. 419, § 1; Laws, 1994, ch. 581, § 12; Laws, 1997, ch. 545, § 11, eff from and after passage (approved April 10, 1997).**

**Cross References —** School year, see §§ 37-13-61 through 37-13-69.

### OPINIONS OF THE ATTORNEY GENERAL

A local school board has authority to employ a licensed teacher for less than a full school year, which is 187 employment days, as long as the exact time period of employment is set forth in the contract. Mayfield, Aug. 31, 2001, A.G. Op. #01-0511.

## § 37-9-25. Contracts for periods greater than one scholastic year.

The school board shall have the power and authority, in its discretion, to employ the superintendent, unless such superintendent is elected at the November 2015 general election, for not exceeding four (4) scholastic years and the principals or licensed employees for not exceeding three (3) scholastic years. In such case, contracts shall be entered into with such superintendents, principals and licensed employees for the number of years for which they have been employed. However, in the event that a vacancy in the office of the superintendent of schools elected at the November 2015 general election shall occur before January 1, 2019, the local school board shall then appoint the superintendent of the school district and enter into contract with the appointee for a period not to exceed three (3) scholastic years. All such contracts with licensed employees shall for the years after the first year thereof be subject to the contingency that the licensed employee may be released if, during the life of the contract, the average daily attendance should decrease from that existing during the previous year and thus necessitate a reduction in the number of licensed employees during any year after the first year of the contract. However, in all such cases the licensed employee must be released before July 1 or at least thirty (30) days prior to the beginning of the school term, whichever date should occur earlier. The salary to be paid for the years after the first year of such contract shall be subject to revision, either upward or downward, in the event of an increase or decrease in the funds available for the payment thereof, but, unless such salary is revised prior to the beginning of a school year, it shall remain for such school year at the amount fixed in such contract. However, where school district funds, other than minimum education program funds, are available during the school year in excess of the amount anticipated at the beginning of the school year the salary to be paid for such year may be increased to the extent that such additional funds are available and nothing herein shall be construed to prohibit same.

**HISTORY: Codes, 1942, § 6282-17; Laws, 1953, Ex Sess, ch. 20, § 17; Laws, 1986, ch. 492, § 71; Laws, 1997, ch. 545, § 12; Laws, 2000, ch. 533, § 5; Laws, 2000, ch. 610, § 7; Laws, 2016, ch. 311, § 2; Laws, 2017, ch. 301, § 2, eff from and after passage (approved Jan. 17, 2017).**

**Editor's Notes —** Laws of 2000, ch. 610, § 7, provides:

"SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed."

The repeal had the effect of repealing the amendments made to this section by Laws of 2000, ch. 533, § 5.

**Cross References —** School year, see §§ 37-13-61 through 37-13-69.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 169 et seq., 190.

**CJS.**
78 C.J.S., Schools and School Districts §§ 455, 462, 522, 529, 530.

## § 37-9-27. Bond of superintendents.

The superintendent of any school district, before entering upon the duties of his office, shall furnish a good and sufficient surety bond in the penal sum of One Hundred Thousand Dollars ($100,000.00), with sufficient surety. Such bond shall be filed and recorded in the office of the clerk of the chancery court in which the school district is located, and shall be payable, conditioned and approved in the manner provided by law. The premium on said bond shall be paid out of the school district maintenance fund.

**HISTORY: Codes, 1942, § 6282-04.3; Laws, 1960, ch. 317; Laws, 1986, ch. 492, § 72; Laws, 2004, ch. 357, § 3, eff from and after July 1, 2004.**

**Cross References —** Duties of clerk of chancery court generally, see § 9-5-137.

RESEARCH REFERENCES

**Am. Jur.**
16A Am. Jur. Legal Forms 2d, Schools § 229:52 (Bond of school district officer).

## § 37-9-29. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987. [Codes, 1942, § 6282-04.5; Laws, 1960, ch. 318, §§ 1-5]

**Editor's Notes —** Former § 37-7-29 related to the bonding of a supervisor of a county school district other than county-wide school districts.

## § 37-9-31. Bond of principals.

All school principals and attendance center principals shall furnish good and sufficient surety bonds in like manner as required of superintendents. The amount of such bonds shall be not less than Fifty Thousand Dollars ($50,000.00), with sufficient surety.

The premium upon said bond shall be paid from the maintenance funds of the district served by such principal. Such bond shall be payable, conditioned and approved in the manner provided by law.

All such bonds shall be filed and recorded in the office of the clerk of the chancery court of the county in which the school district is located.

**HISTORY: Codes, 1942, § 6282-04.5; Laws, 1960, ch. 318, §§ 1-5; Laws, 1986, ch. 492, § 73; Laws, 2009, ch. 467, § 15, eff from and after July 1, 2009.**

**Cross References —** Duties of clerk of chancery court generally, see § 9-5-137.
Method of approval of bonds of county officers, see § 25-1-19.

## JUDICIAL DECISIONS

**1. In general.**

Funds coming into the hands of a public school principal as a result of the activities of the school are covered by the statutory conditions of his surety bond requiring faithful performance of the duties of his office, including the proper administration of all activities funds and other funds of the school district. State use of Cochran v. Eakin, 203 So. 2d 587, 1967 Miss. LEXIS 1385 (Miss. 1967).

## RESEARCH REFERENCES

**Am. Jur.**

16A Am. Jur. Legal Forms 2d Schools § 229:37.

## § 37-9-33. Amount of salaries to be in compliance with adequate education program law; annual report on number of certificated and noncertificated employees receiving salary from both a school district and Public Employees' Retirement System.

(1) In employing and contracting with appointed superintendents, principals and certificated employees, the school board shall in all cases determine whether the amount of salary to be paid such superintendent, principals and certificated employees is in compliance with the provisions of the adequate education program. No contract shall be entered into where the salary of a superintendent, principal or certificated employee is to be paid, in whole or in part, from adequate education program funds except where the requirements of said chapter as to the amount of such salary are fully met. Nothing herein shall be construed, however, to prohibit any school district from increasing the salaries of appointed superintendents, principals and certificated employees above the amounts fixed by said chapter, provided that the amount of such increase is paid from funds available to such district other than adequate program funds. Provided further, that school districts are authorized, in their discretion, to negotiate the salary levels applicable to certificated employees employed after July 1, 2009, who are receiving retirement benefits from the retirement system of another state, and the annual experience increment provided in Section 37-19-7 shall not be applicable to any such retired certificated employee. Nothing herein shall be construed to prohibit any school district from complying with the school district employee furlough provisions of Section 37-7-308.

(2) Each school district shall provide an annual report to the State Department of Education on the number of certificated and noncertificated employees receiving a salary from the school district who are also receiving retirement benefits from the Public Employees' Retirement System. This report shall include the name of the employee(s), the hours per week for which the employee is under contract and the services for which the employee is under contract. Said required annual report shall be in a form and deadline promulgated by the State Board of Education.

**HISTORY: Codes, 1942, § 6282-10; Laws, 1953, Ex Sess, ch. 20, § 10; Laws, 1960, ch. 300, § 4; Laws, 1986, ch. 492, § 74; Laws, 1997, ch. 545, § 13; Laws, 1997, ch. 612, § 28; Laws, 2009, ch. 508, § 1; Laws, 2010, ch. 486, § 7, eff from and after passage (approved Apr. 7, 2010).**

**Editor's Notes —** Laws of 1997, ch. 612, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Section 37-7-308, referred to in (1), was repealed by Laws of 2010, ch. 486, § 2, effective July 1, 2012.

**Cross References —** Schedule of teachers' salaries, see § 37-19-7.

### OPINIONS OF THE ATTORNEY GENERAL

No added compensation in the form of bonuses or incentive pay is permitted if not authorized by this section. Pate, January 15, 1999, A.G. Op. #98-0775.

A school board may set the salary for any superintendent, principal, or licensed/certificated employee at the amount the board deems appropriate. Mayfield, July 19, 2002, A.G. Op. #02-0291.

A school district may not grant teachers added compensation in the form of bonuses or incentive pay not authorized by statute. Adams, Feb. 21, 2003, A.G. Op. #03-0045.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 183-185.

**CJS.**

78 C.J.S., Schools and School Districts §§ 650, 665-679, 681.

## § 37-9-35. Employment of teachers to be paid from minimum education program funds.

No school district shall employ any teachers to be paid in whole or in part from minimum education program funds in excess of the number allowable under chapter 19 of this title, but as provided in said chapter the number of teachers paid in whole or in part from minimum education program funds shall be determined by the average daily attendance for the preceding year, and a reduction in the average daily attendance during a current year from that existing in the preceding year shall not authorize the discharge or release of a teacher or teachers during such current year. Nothing herein shall be construed to prohibit any school district from employing such additional teachers as it may deem necessary provided that such teachers are paid wholly from funds other than minimum education program funds.

**HISTORY: Codes, 1942, § 6282-11; Laws, 1953, Ex Sess, ch. 20, § 11, eff from and after July 1, 1954.**

**Cross References —** Schedule of teachers' salaries, see § 37-19-7.

## § 37-9-36. Repealed.

Repealed by Laws, 1992, ch. 524, § 17, eff from and after July 1, 1992. [Laws, 1986, ch. 492, § 63, eff from and after July 1, 1987]

**Editor's Notes** — Former § 37-9-36 provided for salaries and per diem allowances for elected superintendents of schools.

## § 37-9-37. Factors considered in fixing salaries of superintendents, principals or licensed employees.

The amount of the salary to be paid any superintendent, principal or licensed employee shall be fixed by the school board, provided that the requirements of Chapter 19 of this title are met as to superintendents, principals and licensed employees paid in whole or in part from minimum education program funds. In employing such superintendents, principals and licensed employees and in fixing their salaries, the school boards shall take into consideration the character, professional training, experience, executive ability and teaching capacity of the licensed employee, superintendent or principal. It is the intent of the Legislature that whenever the salary of the school district superintendent is set by a school board, the board shall take into consideration the amount of money that the district spends per pupil, and shall attempt to insure that the administrative cost of the district and the amount of the salary of the superintendent are not excessive in comparison to the per pupil expenditure of the district.

**HISTORY: Codes, 1942, § 6282-12; Laws, 1953, Ex Sess, ch. 20, § 12; Laws, 1986, ch. 492, § 75; Laws, 1992, ch. 524, § 4; Laws, 1997, ch. 545, § 14, eff from and after passage (approved April 10, 1997).**

**Cross References** — Appointed county superintendent of education to receive compensation prescribed by this section, see § 37-5-71.

Schedule of teachers' salaries, see § 37-19-7.

### OPINIONS OF THE ATTORNEY GENERAL

The salary of an elected or appointed superintendent of education is determined by the school board after taking into consideration the character, professional training, experience, executive ability and capacity of the individual as well as the amount of money that is spent in the school district per pupil (while at the same time insuring that the administrative cost of the district and the amount of salary of the superintendent are not excessive). Johnson, January 9, 1998, A.G. Op. #97-0747.

A school board may set the salary for any superintendent, principal, or licensed/certificated employee at the amount the board deems appropriate. Mayfield, July 19, 2002, A.G. Op. #02-0291.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 183-185.

**CJS.**
78 C.J.S., Schools and School Districts §§ 626-630.

## § 37-9-39. Time of payment of salaries.

(1) All school districts shall process a single monthly payroll for licensed employees and may process a single monthly or a semimonthly payroll for nonlicensed employees, in the discretion of the local school board, consistent with the provisions of Section 37-151-103(1), except for December, when salaries or wages shall be paid by the last working day. Salaries or wages shall be paid at a minimum on a monthly basis. The standard contract for school district employees prescribed by the State Board of Education shall provide that school district employees shall earn a salary payable in equal monthly installments beginning in the first month of employment, regardless of the number of days worked in any particular month by the employee. Any employee failing to complete the contractual obligation of service, and who receives payment in excess of the monthly installment for the period which such employee ceases employment with the school district, shall become liable immediately to the school board of the employing district for the sum of all amounts received in payment less the corresponding amount of any compensation paid for which service has been rendered, plus interest accruing at the current Stafford Loan rate at the time the person discontinues his or her service.

(2) Any school employee whose employment ends during a school term, regardless of the reason(s) the employment ended, shall be paid salary or wages only for that portion of the school term that employee actually worked. Nothing in this subsection (2) shall be construed to entitle any employee to payment of salary or wages when no work has been performed.

**HISTORY: Codes, 1942, § 6282-14; Laws, 1953, Ex Sess, ch. 20, § 14; Laws, 1955, Ex Sess, ch. 53; Laws, 1974, ch. 455; Laws, 1986, ch. 492, § 76; Laws, 1987, ch. 307, § 13; Laws, 1990, ch. 398, § 1; Laws, 1992, ch. 524, § 5; Laws, 1997, ch. 545, § 15; Laws, 2003, ch. 546, § 3; Laws, 2012, ch. 543, § 6; Laws, 2013, ch. 566, § 1; Laws, 2014, ch. 302, § 1; Laws, 2014, ch. 420, § 2, eff from and after passage (approved March 24, 2014).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. The code reference in the first sentence was updated. The Joint Committee ratified the correction at its August 16, 2012, meeting.

Section 1 of ch. 302, Laws of 2014, effective from and after passage (approved February 10, 2014), amended this section. Section 2 of ch. 420, Laws of 2014, effective from and after passage (approved March 24, 2014), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 420, Laws of 2014, which contains language that specifically provides that it supersedes § 37-9-39 as amended by

Chapter 302, Laws of 2014.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in an internal statutory reference in the first sentence of (1) by substituting "37-151-103(1)" for "37-157-103(1)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

**Cross References** — Schedule of teachers' salaries, see § 37-19-7.

### OPINIONS OF THE ATTORNEY GENERAL

There is no legal impediment to a school district modifying its contract with a teacher when it is mutually beneficial to both parties to do so. Adams, June 7, 2002, A.G. Op. #02-0308.

Section 37-9-39 authorizes school district employees to receive monthly payments over a twelve-month period, however, a district may only pay salary or wages for time that has actually been worked and earned and, consequently, only time worked and earned may be deferred over twelve months. Adams, Mar. 14, 2003, A.G. Op. #03-0068.

### RESEARCH REFERENCES

**Am. Jur.**

16A Am. Jur. Legal Forms 2d, Schools § 229:234.

**CJS.**

78 C.J.S., Schools and School Districts §§ 483, 484, 490, 491.

## § 37-9-41. Manner of payment of salaries.

The salaries of superintendents, principals and licensed employees shall be paid by pay certificates issued by the school district superintendent. Such pay certificates may be issued without additional authorization of the school board where the amount of salary has been fixed and a contract entered into as is provided in this chapter. All pay certificates shall be preserved by him as a part of the official records of his office for the same time and in the same manner as other records are preserved. Except as is herein provided, the said warrants shall be governed in all respects by the same laws regulating the issuance of other warrants for other purposes. All pay certificates and warrants issued shall show the gross amount of the salary and all authorized deductions therefrom for income taxes, Social Security, retirement contributions and other lawful purposes.

**HISTORY: Codes, 1942, § 6282-18; Laws, 1953, Ex Sess, ch. 20, § 18; Laws, 1986, ch. 492, § 77; Laws, 1997, ch. 545, § 16; Laws, 2004, ch. 357, § 4, eff from and after July 1, 2004.**

**Cross References** — Schedule of teachers' salaries, see § 37-19-7.

### RESEARCH REFERENCES

**CJS.**

78 C.J.S., Schools and School Districts §§ 681, 683.

## § 37-9-43. Payment of salary prior to execution of written contract; effect of breach of contract.

It shall be unlawful for any appointed superintendent, principal or licensed employee to be paid for any services as such until a written contract has been executed as is provided and required by this chapter. If any school district superintendent shall make any such payment prior to the execution of the contract he shall be civilly liable for the amount thereof, and, in addition, shall be liable upon his bond. If any licensed employee, appointed superintendent or principal shall willfully and without just cause breach his contract and abandon his employment he shall not be entitled to any further salary payments either for services rendered prior to such breach or for services which were thereafter to have been rendered. Nothing in this section, however, shall prevent the employment and payment of substitute teachers without a written contract.

**HISTORY: Codes, 1942, § 6282-15; Laws, 1953, Ex Sess, ch. 20, § 15; Laws, 1986, ch. 492, § 78; Laws, 1997, ch. 545, § 17; Laws, 2004, ch. 357, § 5, eff from and after July 1, 2004.**

**Cross References —** Release from contract, see § 37-9-55.
Abandonment of employment, see § 37-9-57.
Schedule of teachers' salaries, see § 37-19-7.

### JUDICIAL DECISIONS

**1. In general.**

Under this section [Code 1942, § 6282-15], a county superintendent of education is accountable to the school fund for payments to teachers in excess of the amounts fixed by the salary law, even though he acted in good faith and through honest error. Golding v. Latimer, 239 Miss. 163, 121 So. 2d 615, 1960 Miss. LEXIS 277 (Miss. 1960).

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 176, 198, 199, 201.

## §§ 37-9-45 and 37-9-47. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.
§ 37-9-45. [Codes, 1942, § 6282-16; Laws, 1953, Ex Sess, ch. 20, § 16]
§ 37-9-47. [Codes, 1942, § 6282-19; Laws, 1953, Ex Sess, ch. 20, § 19]

**Editor's Notes —** Former § 37-9-45 provided for payment of salaries of teachers, superintendents and principals for time lost on account of the closing of a school by county or state officials or by boards of trustees in emergency cases.

Former § 37-9-47 provided for the use of school funds to pay salaries.

## § 37-9-49. Deduction of dues, etc., from salaries.

It shall be unlawful for the superintendent of schools to deduct or permit to be deducted from the salary of any superintendent, principal or licensed employee any dues, fines or penalties payable or alleged to be payable because of the membership of such superintendent, principal or licensed employee in any organization or association. However, dues or premiums in health associations or corporations and tax sheltered annuity deductions authorized by the United States Internal Revenue Code may be deducted upon written authorization from the superintendent, principal or licensed employee involved. Any superintendent of schools who shall make any such deduction or permit any such deduction to be made, except those herein provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Twenty-five Dollars ($25.00) for each such deduction.

**HISTORY: Codes, 1942, § 6282-22; Laws, 1953, Ex Sess, ch. 20, § 22; Laws, 1962, ch. 347; Laws, 1986, ch. 492, § 79; Laws, 1997, ch. 545, § 18; Laws, 2004, ch. 357, § 6, eff from and after July 1, 2004.**

**Cross References —** Schedule of teachers' salaries, see § 37-19-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-9-51. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.
[Codes, 1942, § 6282-31; Laws, 1955, Ex Sess, ch. 65; 1977, ch. 486, § 28]

**Editor's Notes —** Former § 37-9-51 provided for payment of additional salaries for vocational teachers.

## § 37-9-53. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.
[Codes, 1942, § 6252-10; Laws, 1953, Ex Sess, ch. 19, § 10]

**Editor's Notes —** Former § 37-9-53 prohibited the practice of speculation in warrants or pay certificates.

## § 37-9-55. Release from contract.

Any appointed superintendent, principal or licensed employee in any public school who is under contract to teach or perform other duties and who desires to be released from such contract shall make application in writing to the school board of the school district for release therefrom, in which application the reasons for such release shall be clearly stated. If the board acts favorably upon such application for release, such superintendent, principal or licensed employee shall be released from his contract, and said contract shall be null and void on the date specified in the school board's order.

**HISTORY: Codes, 1942, § 6282-20; Laws, 1953, Ex Sess, ch. 20, § 20; Laws,**

**1981, ch. 499, § 8; Laws, 1986, ch. 492, § 80; Laws, 1997, ch. 545, § 19, eff from and after passage (approved April 10, 1997).**

RESEARCH REFERENCES

**ALR.**
Termination of teacher's tenure status by resignation. 9 A.L.R.4th 729.

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 149, 151, 153.

16A Am. Jur. Legal Forms 2d (Rev), Schools § 229:239 (resignation of teacher).

**CJS.**
78 C.J.S., Schools and School Districts §§ 460, 461.

## § 37-9-57. Effect of abandonment of employment.

If any appointed superintendent, principal or licensed employee in any public school of this state shall arbitrarily or willfully breach his or her contract and abandon his or her employment without being released therefrom as provided in Section 37-9-55, the contract of such superintendent, principal or licensed employee shall be null and void. In addition thereto the license of such superintendent, principal or licensed employee may be suspended by the State Board of Education for a period of one (1) school year as provided in Section 37-3-2(8) upon written recommendation of the majority of the members of the school board of the school district involved.

**HISTORY: Codes, 1942, § 6282-21; Laws, 1953, Ex Sess, ch. 20, § 21; Laws, 1986, ch. 492, § 81; Laws, 1988, ch. 536, § 2; Laws, 1997, ch. 545, § 20, eff from and after passage (approved April 10, 1997).**

**Cross References** — Power of the State Board of Education to revoke or suspend any teacher or administrator certificate upon the recommendation of the Commission on Teacher and Administrator Education, Certification, and Development, see § 37-3-2.

Breach of contract, see § 37-9-43.

Procedures designed to insure fair nonrenewal of licensed education employees, see §§ 37-9-101 through 37-9-113.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 149, 151, 154 et seq.

**CJS.**
78 C.J.S., Schools and School Districts §§ 421-425 et seq.

## § 37-9-59. Grounds and procedure for dismissal or suspension of licensed employee; attendance at different school system by child as ground for denying employment or reemployment of superintendent, principal or licensed employee.

For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any licensed employee in any school district. Before being so dismissed or suspended any licensed employee shall be notified of the charges against him and he shall be advised that he is entitled to a public hearing upon said charges. Provided, however, that a school superintendent whose employment has been terminated under this section shall not have the right to request a hearing before the school board or a hearing officer. Provided, however, that a licensed employee in a conservator school district whose employment has been terminated under this section for good cause as determined by a conservator appointed by the State Board of Education shall not have a right to request a hearing before the school board, a hearing officer or the State Board of Education. The conservator has the right to immediately terminate a licensed employee under this section. In the event the continued presence of said employee on school premises poses a potential threat or danger to the health, safety or general welfare of the students, or, in the discretion of the superintendent, may interfere with or cause a disruption of normal school operations, the superintendent may immediately release said employee of all duties pending a hearing if one is requested by the employee. In the event a licensed employee is arrested, indicted or otherwise charged with a felony by a recognized law enforcement official, the continued presence of the licensed employee on school premises shall be deemed to constitute a disruption of normal school operations. The school board, upon a request for a hearing by the person so suspended or removed shall set a date, time and place for such hearing which shall be not sooner than five (5) days nor later than thirty (30) days from the date of the request. The procedure for such hearing shall be as prescribed for hearings before the board or hearing officer in Section 37-9-111. From the decision made at said hearing, any licensed employee shall be allowed an appeal to the chancery court in the same manner as appeals are authorized in Section 37-9-113. Any party aggrieved by action of the chancery court may appeal to the Mississippi Supreme Court as provided by law. In the event that a licensed employee is immediately relieved of duties pending a hearing, as provided in this section, said employee shall be entitled to compensation for a period up to and including the date that the initial hearing is set by the school board, in the event that there is a request for such a hearing by the employee. In the event that an employee does not request a hearing within five (5) calendar days of the date of the notice of discharge or suspension, it shall constitute a waiver of all rights by said employee and such discharge or suspension shall be effective on the date set out in the notice to the employee.

The school board of every school district in this state is hereby prohibited from denying employment or reemployment to any person as a superintendent, principal or licensed employee, as defined in Section 37-19-1, or as a noninstructional personnel, as defined in Section 37-9-1, for the single reason that any eligible child of such person does not attend the school system in which such superintendent, principal, licensed employee or noninstructional personnel is employed.

The provisions of this section shall be fully applicable to any administrator or employee of the Mississippi School of the Arts (MSA).

**HISTORY: Codes, 1942, § 6282-26; Laws, 1953, Ex Sess, ch. 20, § 26; Laws, 1974, ch. 459; Laws, 1978, ch. 311, § 1; Laws, 1986, ch. 492, § 82; Laws, 1987, ch. 307, § 14; Laws, 1997, ch. 545, § 21; Laws, 2012, ch. 440, § 3; Laws, 2014, ch. 458, § 4, eff from and after passage (approved March 31, 2014); Laws, 2019, ch. 432, § 7, eff from and after July 1, 2019.**

**Editor's Notes —** Section 37-19-1, referred to in this section, was repealed by Laws of 1997, ch. 612, § 30, effective July 1, 2002.

**Amendment Notes —** The 2019 amendment added the last paragraph.

**Cross References —** Power of the State Board of Education to revoke or suspend any teacher or administrator certificate upon the recommendation of the Commission on Teacher and Administrator Education, Certification, and Development, see § 37-3-2.

Procedures designed to insure fair nonrenewal of licensed education employees, see §§ 37-9-101 through 37-9-113.

Section 37-9-111 inapplicable to superintendent whose employment was terminated by school board under this section, see § 37-9-111.

## JUDICIAL DECISIONS

### ANALYSIS

1. Suspension and removal—In general.
2. —Superintendents.
3. —Principals.
4. —Teachers — In general.
5. — —Insubordination or other good cause.
6. —Other personnel.
7. Procedural matters.
8. Remedies.
9. Appeals.

**1. Suspension and removal—In general.**

Former high school principal failed to show a breach of contract by a school district, a school board, and various board members and employees because there was good cause for his termination due to his incompetence and neglect of duty as to his handling of the school's records and scheduling. Floyd v. Amite County Sch. Dist., 581 F.3d 244, 2009 U.S. App. LEXIS 19346 (5th Cir. Miss. 2009).

Although a school district superintendent has the authority to suspend an employee, the ultimate power to terminate an employee lies with the school board. Yarbrough v. Camphor, 645 So. 2d 867, 1994 Miss. LEXIS 450 (Miss. 1994).

The legislative intent in enacting this section [Code 1942, § 6282-26] was to make teachers and principals reasonably secure in their jobs and subject to removal only for serious causes. Madison County Board of Education v. Miles, 252 Miss. 711, 173 So. 2d 425, 1965 Miss. LEXIS 1141 (Miss. 1965).

**2. —Superintendents.**

Miss. Code Ann. § 37-9-59 did not prevent school board members from giving a superintendent a pre-termination hearing because (1) the statute only said a school board did not have to provide a requested hearing, and (2) any statutory bar to such a hearing did not affect the viability of the superintendent's Fourteenth Amendment claim and only indicated the superintendent's deprivation of a property interest in the superintendent's employment was authorized by the state, more strongly implicating the due process clause. Greene v. Greenwood Pub. Sch. Dist., 890 F.3d 240, 2018 U.S. App. LEXIS 12510 (5th Cir. Miss. 2018).

Dismissal of a superintendent under Miss. Code Ann. § 37-9-59 was upheld under Miss. Code Ann. § 37-9-113 because it was not arbitrary and capricious since the grounds cited showed that problems existed at all levels, the decision was supported by substantial evidence since he was aware of the problems without receiving written notice of such based on the topics discussed in frequent board meetings, and there was no personal stake or animosity against him by a school district's board. Wilder v. Bd. of Trs. of the Hazlehurst City Sch. Dist., 969 So. 2d 83, 2007 Miss. App. LEXIS 253 (Miss. Ct.

App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 657 (Miss. 2007).

Superintendent's due process argument was rejected in a case arising from his dismissal because he was not required to get the notice set forth in Miss. Code Ann. § 37-9-109, which covered nonrenewals, and a school district board complied with the procedures set forth in Miss. Code Ann. § 37-9-59 and Miss. Code Ann. § 37-9-111; moreover, even if § 37-9-109 did apply to the case, the superintendent failed to avail himself of the requirements of such. Wilder v. Bd. of Trs. of the Hazlehurst City Sch. Dist., 969 So. 2d 83, 2007 Miss. App. LEXIS 253 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 657 (Miss. 2007).

The evidence was sufficient to support a school superintendent's termination of a school principal on the ground that he had assaulted and threatened a teacher, even though the principal and the teacher gave conflicting testimony regarding the alleged incidents, where the evidence that the principal had assaulted the teacher on one occasion and threatened her on another was "substantial"-i.e., more than a mere scintilla and providing reasonable inferences therefrom. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

It was the manifest purpose of the Legislature that the school district board of trustees have the right and power, as well as the duty, to proceed with removal of an employee who may have been found to have been guilty of one or more of the derelictions enumerated in § 37-9-59, although such employee may have been employed and be classified as a school district superintendent; further, such school district superintendent shall have and enjoy the right to a hearing before the school board as provided in § 37-9-111, if requested, together with all of the other rights to due process specified for principals and teachers. The power of the county superintendent of education, the superintendent of a consolidated school district or the superintendent of the municipal separate school district to remove principals and teachers is limited to those cases in which the person proposed to be removed does not request a hearing. Tutwiler v. Jones, 394 So. 2d 1346, 1981 Miss. LEXIS 1958 (Miss. 1981).

**3. —Principals.**

Good cause supported a principal's termination because the principal knew the school could not buy a fairway mower, yet the principal executed a document purporting to give a high school coach the authority to make such a purchase on the school's behalf, which exceeded the principal's authority and enabled a serious violation of the school board's purchasing policy. Hester v. Lowndes County Sch. Dist., 137 So. 3d 325, 2013 Miss. App. LEXIS 509 (Miss. Ct. App. 2013).

Former school principal's Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., race discrimination claims, which the principal did not raise during his discharge proceedings and appeal were not barred by res judicata; although the chancery court could consider under Miss. Code. Ann. § 37-9-113 whether the principal's rights had been violated, the chancery court was limited to the record that was made before the board, and the principal could not have been expected to raise before the board his claim that the board was motivated by discriminatory animus when it upheld the principal's discharge. Floyd v. Amite County Sch. Dist., 495 F. Supp. 2d 619, 2007 U.S. Dist. LEXIS 49126 (S.D. Miss. 2007).

Former school principal's Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., race discrimination claims, which the principal did not raise during his discharge proceedings and appeal were not barred by collateral estoppel because the race discrimination claims were not raised in the discharge proceedings, and although a court of appeals found that the school superintendent and board of education had three legitimate reasons for discharging the principal, the principal could attempt to show that those reasons were pretextual. Floyd v. Amite County Sch. Dist., 495 F. Supp. 2d 619, 2007 U.S. Dist. LEXIS 49126 (S.D. Miss. 2007).

High school principal's disregard of school attorney's advice that school prayer was unconstitutional and could result in expensive litigation, and his decision to allow students to read prayers over intercom system at school in nonemergency situation showed lack of professional judgment which constituted "other good cause" for his one-year suspension under statute governing suspension or removal of teachers and principals. Board of Trustees v. Knox, 688 So. 2d 778, 1997 Miss. LEXIS 44 (Miss. 1997).

A school principal was properly reassigned to the position of administrative assistant in the office of the superintendent of schools where the evidence established that the principal had not been able to cope properly with the problem of scheduling students. Holliday v. West Point Municipal Separate School Dist., 401 So. 2d 1296, 1981 Miss. LEXIS 2071 (Miss. 1981).

The removal of a principal of an attendance center was justified where it was shown that the principal had violated written policies of the county board of education by using school gasoline in his own automobile, by charging personal long distance phone calls to the school, by purchasing certain equipment without taking competitive bids, and by making purchases of material under a Title II project which were not reimbursable under this project, causing loss to the center and the school district. Stegall v. Jones, 241 So. 2d 349, 1970 Miss. LEXIS 1334 (Miss. 1970).

### 4. —Teachers — In general.

A school board's termination of a teacher who accepted her reassignment, but merely tried to point out to her superiors how she could better serve in a different capacity, was not justified. Dean v. Pringle, 592 So. 2d 49, 1991 Miss. LEXIS 848 (Miss. 1991).

Teacher who reports to work at wrong school as result of administrative problems resulting in teacher not being assigned any duties is not being insubordinate or neglecting duty and decision of school board terminating employment on grounds of insubordination and neglect of duty will be overturned on appeal as arbitrary and capricious. Noxubee County Bd. of Education v. Givens, 481 So. 2d 816, 1985 Miss. LEXIS 2319 (Miss. 1985).

### 5. — —Insubordination or other good cause.

Good cause existed for termination of a high school coach because he wrongfully exposed a school district to potential liability in a lease/purchase agreement for a fairway mower when he entered the agreement as a purported agent for the school. Hester v. Lowndes County Sch. Dist., 137 So. 3d 325, 2013 Miss. App. LEXIS 509 (Miss. Ct. App. 2013).

The implementation of a school district's "reduction in force" policy resulting from financial difficulties does not constitute "good cause" for the termination or rescission of a teacher's contract. Byrd v. Greene County Sch. Dist., 633 So. 2d 1018, 1994 Miss. LEXIS 58 (Miss. 1994).

Insubordination is one of the "other good causes" for which one may be dismissed. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

Teacher who reports to work at wrong school as result of administrative problems resulting in teacher not being assigned any duties is not being insubordinate or neglecting duty and decision of school board terminating employment on grounds of insubordination and neglect of duty will be overturned on appeal as arbitrary and capricious. Noxubee County Bd. of Education v. Givens, 481 So. 2d 816, 1985 Miss. LEXIS 2319 (Miss. 1985).

"Insubordination" is a constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority, and as so defined, insubordination is "other good cause" within the meaning of § 37-9-59. Sims v. Board of Trustees, 414 So. 2d 431, 1982 Miss. LEXIS 2026 (Miss. 1982).

The phrase in this section [Miss. Code Ann. § 37-9-59] providing that a school principal may be removed for "other good cause" must be considered in connection with the specific causes preceding it. Madison County Board of Education v. Miles, 252 Miss. 711, 173 So. 2d 425, 1965 Miss. LEXIS 1141 (Miss. 1965).

### 6. —Other personnel.

One who is a school district athletic director and a high school football coach is subject to the provisions of Mississippi Code § 37-9-59, even though the 2 jobs are not specifically listed by the title. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

Dismissal of employee, holding positions of school district athletic director and high school football coach, was justified by findings that dismissed employee had failed to follow school district's published purchasing policy and procedures, had violated school district's published policies and procedures concerning the collection and accounting for money from unauthorized sales of tee shirts, football jerseys, and soft drinks, and had been insubordinate toward the superintendent and the school board. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

**7. Procedural matters.**

School board did not convert a hearing on nonrenewal of a teacher's contract into a termination proceeding because (1) the teacher clearly was not dismissed or suspended from the teacher's position, and (2) an insubordination charge was mere surplusage. Ray v. Lowndes Cnty. Sch. Dist., 205 So. 3d 1096, 2016 Miss. App. LEXIS 802 (Miss. Ct. App. 2016).

Teacher's statutory rights were not violated when a school board did not comply with teacher's request for documents prior to a hearing for dismissal; the board complied with statutory requirements for a hearing following a dismissal, even though the hearing requirements for a nonrenewal, under Miss. Code Ann. § 37-9-109 were stricter. Rivers v. Bd. of Trs., 876 So. 2d 1043, 2004 Miss. App. LEXIS 615 (Miss. Ct. App. 2004).

Terminated teacher was entitled to compensation during period between notice of termination and hearing before school board. Young v. Jefferson Davis County Sch. Bd., 672 So. 2d 1219, 1996 Miss. LEXIS 140 (Miss. 1996).

The procedures followed at an administrative hearing before 3 members of the school board on a teacher's 6-month suspension violated the teacher's right to due process where, during a break in the formal proceedings, the 3 school board members told the teacher that they intended to reject suspension in favor of a formal reprimand, the teacher claimed to have relied on this information and rested her case prematurely, and the board ultimately reached a decision to suspend the teacher; although the teacher was afforded an opportunity to be heard, the school board, by its own actions, prevented her from taking full advantage of her right to present evidence in her favor by leading her to believe that there was no need to present additional evidence. Bowman v. Ferrell, 627 So. 2d 335, 1993 Miss. LEXIS 511 (Miss. 1993).

School board did not exceed statutory authority in investigating and initiating removal of teacher in absence of recommendation by superintendent, where superintendent had resigned upon informing school board of misrepresentation engaged in by superintendent and teacher; since power to remove teacher rests finally with school board, it is unnecessarily technical argument to say that school board cannot investigate and initiate removal in absence of superintendent. Spradlin v. Board of Trustees, 515 So. 2d 893, 1987 Miss. LEXIS 2871 (Miss. 1987).

The hearing procedure covering school employee dismissals under Mississippi Code § 37-9-59 is that found in Mississippi Code § 37-9-111. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

Fact that maintenance supervisor was told by school district superintendent that he was terminated before the board of trustees was convened for a hearing was, at most, harmless procedural error where, at a subsequent hearing, the board made substantially the same findings as the superintendent. Everett v. Board of Trustees, 492 So. 2d 277, 1986 Miss. LEXIS 2523 (Miss. 1986).

Removal of a teacher from her position was a violation of her right to due process where the action was taken without first giving her copies of the written charges against her, or informing her of the identities of those who had preferred the charges, or affording her an opportunity to appear before the board of trustees when it considered the charges; advising the teacher after her removal of her right to a hearing failed to comply with the provisions of § 37-9-59 and § 37-9-111(4). Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

Where the individual members of the school board had already decided not to reemploy teacher at the time she received school superintendent's letter advising her of her right to a public hearing, she could not have been afforded an impartial forum in which to present her case. Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

Where the minutes showed that the board of trustees of a school district at a meeting for the purpose of choosing teachers for the following school term selected petitioner, along with others, as teachers, and that the board would require teachers without degrees to take summer work towards them, but did not indicate that this provision was a condition precedent or subsequent to the employment contract of the teachers so elected, failure of petitioner to attend summer school did not automatically invalidate her contract, and the board of trustees could only remove her under the provisions of § 26, chapter 20, Laws of 1953, extraordinary session [Miss. Code Ann. § 37-9-59]. Cheatham v. Smith, 229 Miss. 803, 92 So. 2d 203, 1957 Miss. LEXIS 328 (Miss. 1957).

**8. Remedies.**

Where a suspended teacher's procedural due process rights had been violated at her hearing before the school board, the chancery court erred in ordering the teacher's reinstatement rather than a rehearing as required by § 37-9-113(4). Bowman v. Ferrell, 627 So. 2d 335, 1993 Miss. LEXIS 511 (Miss. 1993).

**9. Appeals.**

Statute only allowed the chancery court to review whether the final decision of the school board in firing one of its teachers, was supported by substantial evidence, was arbitrary or capricious, or violated a constitutional or statutory right, as such, the statute did not authorize the chancery court to retain jurisdiction over a matter while it sent the matter back to a school board for rehearing; where the teacher failed to perfect his appeal within the 20 days, all of his subsequent motions and appeals were procedurally barred. Cowart v. Simpson County Sch. Bd., 818 So. 2d 1176, 2002 Miss. LEXIS 187 (Miss. 2002).

In reviewing a school district's decision not to renew an employee's contract, the Supreme Court's inquiry concerns whether the nonrenewal decision was (1) made for a reason not specifically prohibited by law, (2) made in accordance with the applicable procedural requirements, (3) supported by substantial evidence, and (4) arbitrary or capricious. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

The chancery court was without jurisdiction in 1976 to entertain the appeal of a discharged school employee where the employee attempted a direct appeal to the chancery court rather than an appeal of her discharge to the State Board of Education as then required by the statute; moreover, the evidence established that the employee had not been discharged solely because her child was enrolled in a private school. Brantley v. Surles, 404 So. 2d 1013, 1981 Miss. LEXIS 2018 (Miss. 1981).

## OPINIONS OF THE ATTORNEY GENERAL

In regard to personnel matters, Sections 37-9-3, 37-7-301(w), 37-9-15, 37-9-17, 37-9-105 and 37-9-59, with the exception of the step-aside provisions of 37-9-17, require the recommendation of the superintendent before the board may act upon the employment of non-instructional employees and certificated employees. Hand, February 1, 1995, A.G. Op. #95-0008.

A licensed employee is entitled to a public hearing on charges brought by the superintendent of schools prior to his or her termination. Storey, Jr., May 17, 2002, A.G. Op. #02-0223.

A school district has the authority to issue a licensed employee a suspension without pay in a school year subsequent to the one in which the misconduct occurred; however, should the district administer the punishment, it is advised to dock the employee's pay based upon last year's salary. Adams, Oct. 18, 2002, A.G. Op. #02-0587.

School board retains the discretion to override the superintendent's decision or impose a lesser or greater punishment if the evidence so warrants or else a hearing would be an exercise in futility. Adams, July 7, 2003, A.G. Op. 03-0279.

This section is applicable to a foreign national employee under contract for a teaching position that requires a license be held. Storey, Aug. 8, 2003, A.G. Op. 03-0353.

Section 37-9-59 provides sufficient authority for a school board to terminate an appointed superintendent following a hearing, if requested by the superintendent, conducted by the board at which the proper determinations required by the statute and consistent with the facts are made. Sanders, Nov. 4, 2005, A.G. Op. 05-0540.

### RESEARCH REFERENCES

**ALR.**

Dismissal of, or disciplinary action against, public school teacher for violation of regulation as to dress or personal appearances of teachers. 58 A.L.R.3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 A.L.R.3d 19.

What constitutes "insubordination as ground for dismissal of public school teacher. 78 A.L.R.3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher. 60 A.L.R.4th 260.

Negligent discharge of employee. 53 A.L.R.5th 219.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 234 et seq., 259 et seq., 263 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Forms 101 et seq. (reinstatement of employee).

22 Am. Jur. Proof of Facts 563, Dismissal of Teachers.

20 Am. Jur. Proof of Facts 2d 511, Teacher's Use of Excessive Corporal Punishment.

28 Am. Jur. Proof of Facts 2d 499, Teacher's Failure to Enforce Safety Rules.

44 Am. Jur. Proof of Facts 2d 655, Defense of Teacher Charged with Professional Misconduct.

**CJS.**

78 C.J.S., Schools and School Districts §§ 541 et seq.

## § 37-9-61. Unlawful reprisal against school district employee for employee's involvement in effort to create or encourage participation in public charter school prohibited.

A school district, school district employee or any other person who has control over personnel actions may not take unlawful reprisal against an employee of the school district because the employee is directly or indirectly involved in an effort to create or encourage participation in a public charter school. As used in this section, the term "unlawful reprisal" means an action which is adverse to the employee and results in one or more of the following for the employee:

(a) Disciplinary or correction action;

(b) Detail, transfer or reassignment;

(c) Suspension, demotion or dismissal;

(d) An unfavorable performance evaluation;

(e) A reduction in pay, benefits or awards;

(f) Elimination of the employee's position without a reduction in force by reason of lack of monies or work; or

(g) Other significant changes in duties or responsibilities which are inconsistent with the employee's salary or employment classification.

**HISTORY: Laws, 2016, ch. 420, § 9, eff from and after July 1, 2016.**

**Editor's Notes —** A former § 37-9-61 [Codes, 1942, § 6282-41; Laws, 1956, ch. 265, § 1; Repealed by Laws, 1986, ch. 492, § 84, effective from and after July 1, 1987] related to a requirement that superintendents, principals, and teachers file an affidavit as to membership in organizations.

## §§ 37-9-63 through 37-9-67. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987.

§§ 37-9-63 through 37-9-67. [Codes, 1942, §§ 6282-42 to 6282-44; Laws, 1956, ch. 265, §§ 2-4]

**Editor's Notes —** Former §§ 37-9-63 through 37-9-67 required superintendents, principals, and teachers to file an affidavit as to membership in organizations.

## § 37-9-69. General duties of superintendents, principals and teachers.

It shall be the duty of each superintendent, principal and teacher in the public schools of this state to enforce in the schools the courses of study prescribed by law or by the state board of education, to comply with the law in distribution and use of free textbooks, and to observe and enforce the statutes, rules and regulations prescribed for the operation of schools. Such superintendents, principals and teachers shall hold the pupils to strict account for disorderly conduct at school, on the way to and from school, on the playgrounds, and during recess.

**HISTORY: Codes, 1942, § 6282-24; Laws, 1953, Ex Sess, ch. 20, § 24, eff from and after July 1, 1954.**

**Cross References —** Duty of State Board of Education to adopt and maintain curriculum and course of study, see § 37-1-3.

Suspension of pupils for good cause, see § 37-9-71.

Textbooks generally, see § 37-43-1 et seq.

### JUDICIAL DECISIONS

### ANALYSIS

1. Apportionment of damages.
2. Duty to protect from sexual assault.
3. Duty to protect from bullying.
4. Duty to protect trespassers.
5. Disorderly conduct.

**1. Apportionment of damages.**

In an action arising from an injury

sustained by the plaintiff when a fight broke out at a high school basketball game, the amount of damages should have been apportioned among all potentially responsible parties, including the individuals involved in the fight. Pearl Pub. Sch. Dist. v. Groner, 784 So. 2d 911, 2001 Miss. LEXIS 94 (Miss. 2001).

**2. Duty to protect from sexual assault.**

Although a public school district was under the general ministerial duty imposed on all schools to supervise its students properly, no breach of this duty was shown when a special-education student was involved in a sexual encounter with another special-education student between classes in a school because the district took reasonable steps to minimize foreseeable risks and provide a safe environment. J.E. v. Jackson Pub. Sch. Dist., 264 So. 3d 786, 2018 Miss. App. LEXIS 353 (Miss. Ct. App. 2018), cert. denied, 265 So. 3d 180, 2019 Miss. LEXIS 101 (Miss. 2019).

Grant of summary judgment in favor of the security service in the student's action after he was sexually assaulted by another student was inappropriate because a security service had contracted with the student's school district to provide security services, and thus it had obligated itself to a duty to protect the student; further, public schools had the statutory duty to minimize the risks to students and to provide a safe environment. Doe v. Wright Sec. Servs., 950 So. 2d 1076, 2007 Miss. App. LEXIS 127 (Miss. Ct. App. 2007).

**3. Duty to protect from bullying.**

Examining discretionary-function immunity under Miss. Code Ann. § 11-46-9(1)(d) and case law, the overarching function involved, holding students to strict account for disorderly conduct and preventing acts of bullying, is ministerial. And while Miss. Code Ann. §§ 37-11-67 and 37-11-69 give a school district discretion as to how to prevent bullying, these statutes do not provide discretion as to whether to prevent bullying. Nor do these statutes override the ministerial statutory duty found in Miss. Code Ann. § 37-9-69 to provide a safe school environment. Smith v. Leake Cnty. Sch. Dist., 195 So. 3d 771, 2016 Miss. LEXIS 293 (Miss. 2016).

Based on the Supreme Court of Mississippi's precedent, and when examined under Miss. Code Ann. § 46-11-9(1)(d) and case law, Miss. Code Ann. § 37-9-69 imposes upon school districts a ministerial duty to provide a safe school environment. Smith v. Leake Cnty. Sch. Dist., 195 So. 3d 771, 2016 Miss. LEXIS 293 (Miss. 2016).

Miss. Code Ann. § 37-9-69 applied to alleged ministerial acts of negligent failure to enforce school district policies, failure to respond to a student's bullying by other students, and failure to discipline those bullies, thus, Miss. Cod Ann. § 11-46-9(1)(a), (d)'s discretionary immunity did not bar those claims; finding that the alleged conduct was ministerial rather than discretionary did not remove the absolute personal immunity afforded the individual officials for actions committed within the course and scope of employment. R.S. v. Starkville Sch. Dist., 2013 U.S. Dist. LEXIS 134264 (N.D. Miss. Sept. 19, 2013).

**4. Duty to protect trespassers.**

Because a decedent was not invited to use a school district bus parking lot, he was a trespasser, and when he left the lot to attempt to cross a public road, he relinquished that status. Thus, the district owed the decedent no duty under Miss. Code Ann. §§ 37-9-69 and 37-7-301 when he stepped off district property and was struck by an oncoming motorist while crossing the road. Gammel v. Tate County Sch. Dist., 995 So. 2d 853, 2008 Miss. App. LEXIS 691 (Miss. Ct. App. 2008).

**5. Disorderly conduct.**

In a negligence action filed against a school district after a student was sexually assaulted, a school district had governmental immunity under the Mississippi Torts Claims Act because the oversight of student conduct and school safety involved an element of choice or judgment and constituted a discretionary function; a statute did not set forth how the ministerial duty to hold students accountable for disorderly conduct at school was to be carried out. Moreover, the school district's actions regarding the implementation of school safety measures and student discipline involved both social and economic policy; however, this immunity was waived due to delay and active participation in the litigation. Doe v. Rankin County Sch. Dist., 2014 Miss. App. LEXIS 617 (Miss. Ct. App. Oct. 28, 2014), rev'd, 189 So. 3d 616, 2015 Miss. LEXIS 552 (Miss. 2015).

Trial court erred in ruling that, pursuant to Miss. Code Ann. § 11-46-9, discretionary immunity under the Mississippi Torts Claims Act, Miss. Code Ann. § 11-46-1 et seq., barred a personal injury action, because a genuine issue of material fact existed as to whether a school district breached its duty of ordinary care in performing its ministerial duty to maintain discipline and to supervise the students, when one student assaulted another student, as required by the school district's handbook.. Swindle v. Neshoba County Sch. Dist., 137 So. 3d 869, 2013 Miss. App. LEXIS 574 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 235 (Miss. 2014).

Because the proximate cause of a minor's injuries was not the conduct of surfing in the back of a pickup truck, but merely the riding in the back of a pickup truck, which could not be considered disorderly conduct within the meaning of Miss. Code Ann. § 37-9-69, the minor could not maintain an action against a school district for injuries he sustained when he fell out of the pickup truck while riding to football practice. Strange v. Itawamba County Sch. Dist., 9 So. 3d 1187, 2009 Miss. App. LEXIS 240 (Miss. Ct. App. 2009).

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 173 et seq.

4 Am. Jur. Proof of Facts 2d, Teacher's Failure to Supervise Students.

28 Am. Jur. Proof of Facts 2d 545, Loco Parentis Status.

**CJS.**

78A C.J.S., Schools and School Districts §§ 726-729.

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

## § 37-9-70. Office for superintendent of schools.

(1) The superintendent shall keep and maintain an office as necessary for the discharge of his or her duties and responsibilities in office. The cost of the operation of said office shall be paid out of such funds as may be available to the school board from all sources, except as provided for in the following subsection.

(2) In all school districts in which the superintendent or the administrative superintendent was, prior to July 1, 1986, known and referred to as county superintendent of education under the statutes of the State of Mississippi or as district superintendent of a special municipal separate school district which embraces all of the territory of a county, the board of supervisors shall be responsible for providing an office together with all necessary furniture and water, gas, electricity, and other utilities necessary and required for the operation of his said office, which shall be paid for out of the general fund of the county upon allowance of the board of supervisors.

**HISTORY: Laws, 1986, ch. 492, § 64; Laws, 2004, ch. 357, § 7, eff from and after July 1, 2004.**

### OPINIONS OF THE ATTORNEY GENERAL

Phone service is "other utility" to be provided for superintendent's office. Gex, Oct. 21, 1992, A.G. Op. #92-0678.

County School Board has authority under this statute to purchase suitable building and land to house Central Purchasing Office and offices of Federal Chapter 1, Drug Free Schools and Migrant Education Programs of school district. Caves Dec. 22, 1993, A.G. Op. #93-0858.

Under stated facts, viz., the office of the school superintendent is located upon property owned by the school district, the board of supervisors is neither obligated nor required to pay to the school district any sums therefor. Palmer, July 24, 1998, A.G. Op. #98-0417.

If a county superintendent of education comes within the terms of subsection (2) of this section, the county board of supervisors has the continuing responsibility of providing an office to the superintendent. The statute also charges the board of supervisors with the responsibility of utilities. Jeanes, Sept. 24, 2004, A.G. Op. 04-0463.

## § 37-9-71. Suspension or expulsion of pupils.

The superintendent of schools and the principal of a school shall have the power to suspend or expel a pupil for good cause, including misconduct in the school or on school property, as defined in Section 37-11-29, on the road to and from school, or at any school-related activity or event when such conduct by a pupil, in the determination of the superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, or for any reason for which such pupil might be suspended, dismissed or expelled by the school board under state or federal law or any rule, regulation or policy of the local school district. For any suspension of more than ten (10) days or expulsions, a student shall have the right to a due process hearing, be represented by legal counsel, to present evidence and cross-examine witnesses presented by the district. The student and the student's parent, legal guardian or person in custody of the student may appeal suspension of more than ten (10) days and expulsions to the school board. The standard of proof in all disciplinary proceedings shall be substantial evidence. The parent or guardian of the child shall be advised of this right to a hearing by the appropriate superintendent or principal and the proper form shall be provided for requesting such a hearing.

**HISTORY: Codes, 1942, §§ 6282-24, 6328-25; Laws, 1953, Ex Sess, ch. 17, § 5, ch. 20, § 24; Laws, 1986, ch. 492, § 83; Laws, 2000, ch. 559, § 2; Laws, 2017, ch. 357, § 1, eff from and after July 1, 2017.**

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Procedure.
3. Immunity.

**1. In general.**

Chancery court properly denied a mother's Miss. R. Civ. P. 60(b) motion, and the supreme court would not address a constitutional challenge that was not properly before it, because the chancery court did not mistakenly or accidentally omit an analysis of the constitutional issue; the issue, the constitutionality of the statute, was not properly before the chancery court for review since the mother raised it for the first time in the Rule 60(b) motion Harbour v. Tupelo Pub. Sch. Dist. ex rel. State, 2019 Miss. LEXIS 232 (June 13, 2019).

Chancery court properly denied a mother's Miss. R. Civ. P. 60(b) motion, and the supreme court would not address a constitutional challenge that was not properly before it, because the chancery court did not mistakenly or accidentally omit an analysis of the constitutional issue; the issue, the constitutionality of the statute, was not properly before the chancery court for review since the mother raised it for the first time in the Rule 60(b) motion Harbour v. Tupelo Pub. Sch. Dist. ex rel. State, 2019 Miss. LEXIS 232 (June 13, 2019).

School board may suspend student caught defacing school building, in accordance with mandatory school district regulation, notwithstanding fact that other punishment might be more appropriate. Clinton Municipal Separate School Dist. v. Byrd, 477 So. 2d 237, 1985 Miss. LEXIS 2204 (Miss. 1985).

**2. Procedure.**

Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment; notice and hearing should generally precede removal of the student from school. Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725, 1975 U.S. LEXIS 23 (U.S. 1975).

**3. Immunity.**

In a negligence action filed against a school district after a student was sexually assaulted, a school district had governmental immunity under the Mississippi Torts Claims Act because the oversight of student conduct and school safety involved an element of choice or judgment and constituted a discretionary function; a statute did not set forth how the ministerial duty to hold students accountable for disorderly conduct at school was to be carried out. Moreover, the school district's actions regarding the implementation of school safety measures and student discipline involved both social and economic policy; however, this immunity was waived due to delay and active participation in the litigation. Doe v. Rankin County Sch. Dist., 2014 Miss. App. LEXIS 617 (Miss. Ct. App. Oct. 28, 2014), rev'd, 189 So. 3d 616, 2015 Miss. LEXIS 552 (Miss. 2015).

## RESEARCH REFERENCES

**ALR.**

Right to hearing on charges before suspension or expulsion from educational institution. 58 A.L.R.2d 903.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 A.L.R.3d 996.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 A.L.R.3d 1201.

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 A.L.R.5th 1.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 350, 355, 356.

**CJS.**

78A C.J.S., Schools and School Districts §§ 1091 et seq.

## § 37-9-73. Repealed.

Repealed by Laws, 1986, ch. 492, § 84, eff from and after July 1, 1987. [Codes, 1942, § 6282-25; Laws, 1953, Ex Sess, ch. 20, § 25]

**Editor's Notes —** Former § 37-9-73 required teachers to keep a daily record of facts pertaining to the school.

## § 37-9-75. Strikes by teachers.

(1) For purposes of this section:

(a) "Strike" means a concerted failure to report for duty, a willful absence from one's position, the stoppage of work, a deliberate slowing down of work, or the withholding, in whole or in part, of the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; provided, however, that nothing herein shall limit or impair the right of any certified teacher to express or communicate a complaint or opinion on any matter related to the conditions of public employment so long as the same is not designed and does not interfere with the full, faithful and proper performance of the duties of employment.

(b) "Certified teacher" shall mean the following employees of public school districts: classroom teachers, supervisors of programs, librarians, guidance personnel, audiovisual personnel and vocational directors.

(2) It is hereby declared that a strike, concerted work stoppage or concerted refusal to perform lawful duties in any manner by certified teachers against public school districts within the State of Mississippi shall be illegal, unprotected and contrary to the public policy of the State of Mississippi.

(3) No certified teacher, group of certified teachers or teacher organization shall promote, encourage or participate in any strike against a public school district, the State of Mississippi or any agency thereof.

(4) No person exercising any authority, supervision or direction over any certified teacher shall have the power to authorize, approve or consent to a strike by one or more certified teachers, and such person shall not authorize, approve or consent to such strike. No local school governing board or any person exercising authority, supervision or direction over any public school shall attempt to close or curtail the operations of the public school, or to change or alter in any manner the schedule of operations of said school in order to circumvent the full force and effect of this statute. In the event of a strike against the public school, the local school governing board shall continue school operations as long as practicable in order to ascertain which teachers are on strike, and certify the names of such teachers to the Attorney General. Any member of a local school governing board or public school administrator who violates this subsection shall be guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00) for each day such violation continues.

(5) Chancery courts having jurisdiction of the parties are vested with the authority to hear and determine all actions alleging violations of subsection (3) of this section. Suits to enjoin violations of subsection (3) of this section shall have priority over all matters on the court's docket except other emergency matters.

(6) If a certified teacher, a group of certified teachers, a teacher organization, or any officer, agent or representative of any teacher organization engages in a strike in violation of subsection (3) of this section, any public school district whose employees are involved or whose employees may be affected by the strike shall file suit to enjoin the strike in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the chancery court having proper jurisdiction and proper venue of such actions. The chancery court shall conduct a hearing with notice to all interested parties, at the earliest practicable time. If the complainant makes a prima facie showing that a violation of subsection (3) of this section is in progress or that there is a clear, real and present danger that such a strike is about to commence, the chancery court shall issue a temporary restraining order enjoining the strike. Upon final hearing, the chancery court shall either make the injunction permanent or dissolve it.

(7) If an injunction to enjoin a strike issued pursuant to this section is not promptly complied with, on the application of the complainant, the chancery court shall immediately initiate contempt proceedings against those who appear to be in violation. A teacher organization found to be in contempt of court for violating an injunction against a strike shall be fined up to Twenty Thousand Dollars ($20,000.00) for each such calendar day. The fines so collected shall immediately accrue to the school district and shall be used by it to replace those services denied the public as a result of the strike. Each officer, agent or representative of a teacher organization found to be in contempt of court for violating an injunction against a teacher organization shall be liable for any damages which might be suffered by a public employer as a result of a violation of the provisions of subsection (3) of this section by the teacher organization or its representatives, officers and agents. The chancery court having jurisdiction over such actions is empowered to enforce judgment against teacher organizations by the attachment or garnishment of organization initiation fees or dues.

(8) If the court, after a hearing on notice, determines that a certified teacher has violated subsection (3) of this section, it shall order the termination of his or her employment by the public school district. No person knowingly violating the provision of said subsection may, subsequent to such violation, be employed or reemployed as a teacher by any public school district in the state unless the court first finds a public necessity therefor.

The provisions of this subsection (8) shall be cumulative and supplemental to any other applicable provision of law.

**HISTORY: Laws, 1985, ch. 351, § 31, eff from and after May 1, 1985.**

**Cross References** — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JUDICIAL DECISIONS

**1. In general.**

Statute declaring strikes by public school teacher employees illegal and contrary to public policy of state rendered moot issues related to strike, such as restraining orders, temporary or permanent injunctions, and declaratory judgments, as absolute prohibition against all teacher strikes. Mississippi Asso. of Educators v. Trustees of Jackson Municipal Separate School Dist., 510 So. 2d 123, 1987 Miss. LEXIS 2439 (Miss. 1987).

## OPINIONS OF THE ATTORNEY GENERAL

While the Mississippi Legislature has placed a statutory prohibition on strikes by teachers at Section 37-9-75, it has not given school districts any corresponding authority either direct or implied to enter into formal collective bargaining agreements with public employees. Johnson, December 20, 1995, A.G. Op. #95-0804.

This section did not apply to a case involving the question of a school board's payment of a teacher for days she did not appear at work if her failure to report to work was due to the school district not timely granting her a hearing as she had requested. Chaney, Feb. 20, 2004, A.G. Op. 04-0038.

## RESEARCH REFERENCES

**ALR.**

Applicability of Norris-La Guardia Act and similar state statutes to injunction action by governmental unit or agency. 29 A.L.R.2d 431.

Labor law: Right of public employees to strike or engage in work stoppage. 37 A.L.R.3d 1147.

What constitutes "insubordination" as ground for dismissal of public school teacher. 78 A.L.R.3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 A.L.R.3d 117.

Bargainable or negotiable issues in state public employment labor relations. 84 A.L.R.3d 242.

Damage liability of state or local public employees' union or union officials for unlawful work stoppage. 84 A.L.R.3d 336.

What constitutes unfair labor practice under state public employee relations acts. 9 A.L.R.4th 20.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees. 22 A.L.R.4th 1103.

**Am. Jur.**

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Form 148 (complaint, petition, or declaration – by school district – against union of public school teachers – for damages incurred as result of strike).

**CJS.**

78 C.J.S. Schools and School Districts §§ 653, 658-661.

**Lawyers' Edition.**

Damages liability of union or its members in suit under 29 USCS § 185 for breach of express or implied no-strike obligation of collective bargaining agreement–federal cases. 68 L. Ed. 2d 884.

**Law Reviews.**

Public Sector Collective Bargaining in Mississippi: An Argument for Acceptance, 56 Miss. L. J. 379, August, 1986.

## § 37-9-77. School Administrator Sabbatical Program.

(1) There is established the Mississippi School Administrator Sabbatical Program which shall be available to licensed teachers employed in Mississippi school districts for not less than three (3) years, for the purpose of allowing such teachers to become local school district administrators under the condi-

tions set forth in this section. The State Board of Education, in coordination with the Board of Trustees of State Institutions of Higher Learning, shall develop guidelines for the program. Application shall be made to the State Department of Education for the Mississippi School Administrator Sabbatical Program by qualified teachers meeting the criteria for a department-approved administration program and who have been recommended by the local school board. Administration programs that are eligible for the administrator sabbatical program shall be limited to those that have been approved by the department by the January 1 preceding the date of admission to the program. Admission into the program shall authorize the applicant to take university course work and training leading to an administrator's license.

(2) The salaries of the teachers approved for participation in the administrator sabbatical program shall be paid by the employing school district from nonminimum education program funds. However, the State Department of Education shall reimburse the employing school districts for the cost of the salaries and paid fringe benefits of teachers participating in the administrator sabbatical program for one (1) contract year. Reimbursement shall be made in accordance with the then current minimum education program salary schedule under Section 37-19-7, except that the maximum amount of the reimbursement from state funds shall not exceed the minimum education program salary for a teacher holding a Class A license and having five (5) years' experience. The local school district shall be responsible for that portion of a participating teacher's salary attributable to the local supplement and for any portion of the teacher's salary that exceeds the maximum amount allowed for reimbursement from state funds as provided in this subsection, and the school board may not reduce the local supplement payable to that teacher. Any reimbursements made by the State Department of Education to local school districts under this section shall be subject to available appropriations and may be made only to school districts determined by the State Board of Education as being in need of administrators.

(3) Such teachers participating in the program on a full-time basis shall continue to receive teaching experience and shall receive the salary prescribed in Section 37-19-7, including the annual experience increments. Such participants shall be fully eligible to continue participation in the Public Employees' Retirement System and the Public School Employees Health Insurance Plan during the time they are in the program on a full-time basis.

(4) As a condition for participation in the School Administrator Sabbatical Program, such teachers shall agree to employment as administrators in the sponsoring school district for not less than five (5) years following completion of administrator licensure requirements. Any person failing to comply with this employment commitment in any required school year, unless the commitment is deferred as provided in subsection (5) of this section, shall immediately be in breach of contract and become liable to the State Department of Education for that amount of his salary and paid fringe benefits paid by the state while the teacher was on sabbatical, less twenty percent (20%) of the amount of his salary and paid fringe benefits paid by the state for each year

that the person was employed as an administrator following completion of the administrator licensure requirements. In addition, the person shall become liable to the local school district for any portion of his salary and paid fringe benefits paid by the local school district while the teacher was on sabbatical that is attributable to the local salary supplement or is attributable to the amount that exceeds the maximum amount allowed for reimbursement from state funds as provided in subsection (2) of this section, less twenty percent (20%) of the amount of his salary and paid fringe benefits paid by the school district for each year that the person was employed as an administrator following completion of the administrator licensure requirements. Interest on the amount due shall accrue at the current Stafford Loan rate at the time the breach occurs. If the claim for repayment of such salary and fringe benefits is placed in the hands of an attorney for collection after default, then the obligor shall be liable for an additional amount equal to a reasonable attorney's fee.

(5) If there is not an administrator position immediately available in the sponsoring school district after a person has completed the administrator licensure requirements, or if the administrator position in the sponsoring school district in which the person is employed is no longer needed before the completion of the five-year employment commitment, the local school board shall defer any part of the employment commitment that has not been met until such time as an administrator position becomes available in the sponsoring school district. If such a deferral is made, the sponsoring school district shall employ the person as a teacher in the school district during the period of deferral, unless the person desires to be released from employment by the sponsoring school district and the district agrees to release the person from employment. If the sponsoring school district releases a person from employment, that person may be employed as an administrator in another school district in the state that is in need of administrators as determined by the State Board of Education, and that employment for the other school district shall be applied to any remaining portion of the five-year employment commitment required under this section. Nothing in this subsection shall prevent a school district from not renewing the person's contract before the end of the five-year employment commitment in accordance with the School Employment Procedures Law (Section 37-9-101 et seq.). However, if the person is not employed as an administrator by another school district after being released by the sponsoring school district, or after his contract was not renewed by the sponsoring school district, he shall be liable for repayment of the amount of his salary and fringe benefits as provided in subsection (4) of this section.

(6) All funds received by the State Department of Education from the repayment of salary and fringe benefits paid by the state from program participants shall be deposited in the Mississippi Critical Teacher Shortage Fund.

**HISTORY: Laws, 1997, ch. 545, § 27; Laws, 1998, ch. 544, § 8; Laws, 2001, ch. 544, § 1; Laws, 2003, ch. 416, § 3; Laws, 2007, ch. 416, § 3; Laws, 2010, ch. 488, § 6, eff from and after July 1, 2010.**

**Editor's Notes —** Laws of 1998, ch. 544, which enacted the provisions of Sections 37-3-89, 37-3-91, 37-101-29, 37-149-7, 37-151-10 and 37-159-1 through 37-159-17, and amended the provisions of Sections 37-9-77, 37-17-8, 37-143-11 [repealed] and 37-149-1, may be cited as the "Mississippi Critical Teacher Shortage Act of 1998" pursuant to Section 37-159-1.

The preamble to Laws of 1998, ch. 544, provides in pertinent part:

"WHEREAS, in many rural areas and communities in the State of Mississippi, particularly in the Mississippi Delta, there exists a critical shortage of qualified teachers that continues to grow at an increasing rate as the number of teachers in those areas who are eligible for retirement escalates while fewer college students aspire to a career in teaching; and

"WHEREAS, the absence of a qualified teacher in every classroom in the state contributes to overall lower test scores for the State of Mississippi and will negatively impact the state's work force of tomorrow, made of our children of today; and

"WHEREAS, it is the intent of the Legislature, in passing this act, to immediately reverse this teacher shortage trend by offering attractive incentives to qualified persons who pursue a profession in teaching and agree to serve in those communities wherein the greatest need for teachers exists, thereby enabling every child in the State of Mississippi to receive a quality education: NOW, THEREFORE,"

**Cross References —** Public employees' retirement system, see § 25-11-101 et seq.

Public School employees health insurance plan, see §§ 25-15-301, 25-15-303.

State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Mississippi Critical Teacher Shortage Fund, see §§ 37-159-17.

## § 37-9-79. Professional school counselors; qualifications; comprehensive counseling services; code of ethics.

(1) Beginning with the 2014-2015 school year, the assignment of K-12 Professional School Counselors to the particular schools within the district shall be at the discretion of the local school board with the following restrictions:

(a) No individual shall be employed as a professional school counselor without a minimum of a Master's Degree in Guidance and Counseling, or in an emergency situation, an appropriate certification as determined by the Commission on Teacher and Administrator Education, Certification and Licensure and Development; and

(b) Professional school counselors shall provide the following comprehensive counseling services:

(i) Academic and personal/social counseling;

(ii) Use multiple student data sources to help students make informed academic and career choices;

(iii) Career and educational counseling;

(iv) Individual and group counseling (large/small);

(v) Crisis intervention and preventive counseling;

(vi) Referrals to community agencies;

(vii) Educational consultations and collaboration with teachers, administrators, parents and community leaders;

(viii) Educational and career placement services;

(ix) Follow-up counseling services;

(x) Conflict resolution; and

(xi) Professional school counselors must spend a minimum of eighty percent (80%) of their contractual time to the delivery of services to students as outlined by the American School Counselor Association. Delivery of services is the direct service provided to students, parents, school staff and the community which are interaction between professional school counselors and students. These direct services may include the delivery of the following:

1. School counseling core curriculum: This curriculum is designed to help students attain the desired competencies and to provide all students with the knowledge, attitudes and skills appropriate for their developmental level. The school counseling core curriculum is delivered throughout the school's overall curriculum and may be presented by professional school counselors in collaboration with other professional educators and other resources. Collaborative efforts may be implemented to enhance the services provided.

2. Individual student planning: Professional school counselors coordinate ongoing systemic activities or individual/group sessions designed to assist students in establishing personal/social goals and developing future career plans.

3. Responsive services: Responsive services are designed to meet students' immediate needs and concerns in regard to social/personal issues. Responsive services may include counseling in individual, small-group settings, or crisis responses.

4. Indirect Student Services: Indirect services are provided on behalf of students as a result of the school counselors' interactions with others including referrals for additional assistance, consultation and collaboration with parents, teachers, other educators and community organizations.

(2) Professional school counselors shall abide by the American School Counselor Association Code of Ethics.

(3) The State Department of Education may adopt regulations regarding the activities of the professional school counselor as are not inconsistent with this section.

**HISTORY: Laws, 2002, ch. 591, § 1; Laws, 2014, ch. 320, § 1, eff from and after July 1, 2014.**

**Cross References —** Commission on teacher and administrator education, certification and licensure and development, see § 37-3-2.

## § 37-9-81. Contracts with individuals with professional experience in academic, finance or other managerial and operational functions of schools to serve as consultants to the schools; certain individuals ineligible to serve as consultant.

The school board of a local school district may contract with a person having professional experience in academic, finance or other managerial and operational functions of schools and school districts to serve as a consultant to the school board, superintendent, principals and licensed district and school level administrators in the district. However, any person having experience as a superintendent, principal or other licensed district or school level administrator whose last full-time employment in the field of education was with a school district in Mississippi determined by the State Board of Education to be a failing district is not eligible to serve as a consultant to any school district in the state, including the district at which the person was last employed, for a period of two (2) years following the last date of the person's employment with the failing school district. School districts seeking the services of a consultant shall verify the employment background of any person being considered to provide those services and may not contract with any person who does not meet the qualifications prescribed in this section.

**HISTORY: Laws, 2010, ch. 488, § 3, eff from and after July 1, 2010.**

## EDUCATION EMPLOYMENT PROCEDURES LAW

Sec.

37-9-101. Short title; declaration of legislative intent.
37-9-103. Definitions; applicability of Education Employment Procedures Law.
37-9-104. Written notice of determination not to offer superintendent a renewal contract.
37-9-105. Written notice of decision not to offer employee renewal contract; deadline for notification of nonreemployment.
37-9-107. Repealed.
37-9-109. Rights of employee receiving notice of nonrenewal generally; request for hearing; finality of decision.
37-9-111. Hearing.
37-9-113. Judicial review.

### § 37-9-101. Short title; declaration of legislative intent.

Sections 37-9-101 through 37-9-113 shall be known as and cited as the "Education Employment Procedures Law of 2001."

It is the intent of the Legislature to establish procedures to provide for accountability in the teaching profession; to provide a mechanism for the nonrenewal of licensed education employees in a timely, cost-efficient and fair manner; to provide public school employees with notice of the reasons for not offering an employee a renewal of his contract; to provide an opportunity for the employee to present matters in extenuation or exculpation; to provide the employee with an opportunity for a hearing to enable the board to determine whether the recommendation of nonemployment is a proper employment decision and not contrary to law and to require nonrenewal decisions to be based upon valid educational reasons or noncompliance with school district personnel policies. It is the intent of the Legislature not to establish a system of tenure.

**HISTORY: Laws, 1974, ch. 577, § 1; Laws, 1977, ch. 489, § 1; Laws, 2001, ch. 459, § 1, eff from and after July 1, 2001.**

**Cross References —** Nonrenewal of contracts in administrator sabbatical program, see § 37-9-77.

Hearing, see § 37-9-111.

Appeals, see § 37-9-113.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Applicability.
3. Property interest in employment.
4. Standard of proof.
5. Collateral estoppel.

**1. In general.**

Where teacher sued the school board over nonrenewal of an earlier contract without the required notice, the issue was whether the new contract was sufficiently different from the teacher's previous contract to constitute a nonrenewal. Fact issues as to the relative status of the two positions and whether the difference in pay was solely the result of the different number of days legitimately required remained unresolved; the ultimate consideration in determining whether there was a demotion centered not just on pay, but on responsibility, or other relevant factors, such as whether one of the positions was a lesser one, so that, because fact questions remained relating to whether the teacher had sustained a true demotion without the required statutory notice, summary judgment for the school board was improper. Bd. of Educ. v. Fisher, 874 So. 2d 1019, 2004 Miss. App. LEXIS 503 (Miss. Ct. App. 2004).

The legislature did not intend to require that all decisions of nonreemployment be based upon cause; so long as the nonreemployment decision is not based upon an improper reason, the school board does not have to justify its decision for nonreemployment. Doty v. Tupelo Pub. Sch. Dist., 751 So. 2d 1212, 1999 Miss. App. LEXIS 675 (Miss. Ct. App. 1999).

The terms "cause," as used in this section, and "reason," as used in § 37-9-109, are not interchangeable; thus, under § 37-9-113, a reviewing court may not assess whether the basis for nonrenewal rose to the level of "cause," but may examine the question of whether facts exist to substantiate the reason offered by the school system. Buck v. Lowndes County Sch. Dist., 1999 Miss. App. LEXIS 270 (Miss. Ct. App. May 4, 1999), rev'd, 761 So. 2d 144, 2000 Miss. LEXIS 32 (Miss. 2000).

Intent of legislature in enacting School Employment Procedures Act was to grant teacher limited right to notice and opportunity to be heard by school board but not to place restrictions on what decisions school board might make. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

Main purpose of School Employment Procedures Act is to provide employees with notice that they will not be reemployed in sufficient time to enable them to secure alternative employment. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

Where there was substantial and manifestly good faith attempt by school superintendent and school board to comply with School Employment Procedures Act (§§ 37-9-101 to 37-9-113), and where teacher was represented by counsel, procedural defects will not render board's actions unlawful. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

School Employment Procedures Act (§§ 37-9-101 to 37-9-113) requires the board to notify the employee of the reasons for its decision, and also if the matter is heard by a hearing officer to nevertheless afford the employee an opportunity to appear before the board and present a statement in her own behalf, in person or by an attorney, prior to a final decision by the board. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**2. Applicability.**

Caucasian retired school principal's due process claim, that she did not receive written notice of nonreemployment and reasons therefor, failed because she did not allege that the reason for her constructive termination was to avoid a hearing but only that it was because of her race. Idom v. Natchez-Adams Sch. Dist., 115 F. Supp. 3d 792, 2015 U.S. Dist. LEXIS 91321 (S.D. Miss. 2015).

In a case in which the sole remaining issue was whether the Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. § 37-9-101 et seq., applied to a teacher's head basketball coach contract with a school district and both parties filed cross-motions for summary judgment, Mississippi law permitted the separate coaching contract at issue, which was not in the form set out in Miss. Code Ann. § 37-9-23 and was exempted from the EEPL. Ladner v. Hancock County Sch. Dist., 614 F. Supp. 2d 768, 2008 U.S. Dist. LEXIS 30490 (S.D. Miss.), aff'd, 292 Fed. Appx. 346, 2008 U.S. App. LEXIS 19467 (5th Cir. Miss. 2008).

In a case in which the sole remaining issue was whether the Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. § 37-9-101 et seq., applied to a teacher's head basketball coach contract with a school district and both parties filed cross-motions for summary judgment, the coaching contract contained express language exempting it from the EEPL. The teacher argued unsuccessfully that the coaching contract had to be subject to the EEPL since a Mississippi high school coach was required by the Mississippi High School Activities Association, Inc. Ladner v. Hancock County Sch. Dist., 614 F. Supp. 2d 768, 2008 U.S. Dist. LEXIS 30490 (S.D. Miss.), aff'd, 292 Fed. Appx. 346, 2008 U.S. App. LEXIS 19467 (5th Cir. Miss. 2008).

In an employment discrimination case in which a former teacher argued that she believed her disability was a motivating factor in her termination because the school district refused to give her a reason for its action, she was not covered by the Mississippi Education Employment Procedures Act. The Mississippi Education Employment Procedures Act defined employee as any teacher employed by the local school district for a continuous period of two years with that district and required to have a valid license issued by the State Department of Education as a prerequisite of employment. Burnworth v. Vicksburg Warren Sch. Dist., 2008 U.S. Dist. LEXIS 57434 (S.D. Miss. July 24, 2008).

Mississippi Education Employment Procedures Law did not apply to a case where a former employee was transferred to an alternative school after teaching biology at a junior high and high school because contract that the employee signed stipulated that the school district had the authority to transfer her, a reassignment was permitted under Miss. Code Ann. § 37-9-14(2)(s), and the reassignment was according to educator licensure guidelines in Mississippi. Winters v. Calhoun County Sch. Dist., 990 So. 2d 238, 2008 Miss. App. LEXIS 193 (Miss. Ct. App. 2008).

Miss. Code Ann. § 37-9-101, while applicable to educators whose contracts were not renewed, does not address demotions. Winters v. Calhoun County Sch. Dist., 990 So. 2d 238, 2008 Miss. App. LEXIS 193 (Miss. Ct. App. 2008).

Former employee's claim against a school district and school board was unsuccessful because Miss. Code Ann. § 37-9-101, while applicable to educators whose contracts were not renewed, did not address demotions. Moreover, there was nothing in the record that supported the employee's assertion that she was demoted or that her contract was not renewed because she would not have had less responsibility at an alternative school, her salary would have been essentially the same, and the employee would not have been required to teach a subject for which she lacked certification. Winters v. Calhoun County Sch. Dist., 990 So. 2d 238, 2008 Miss. App. LEXIS 193 (Miss. Ct. App. 2008).

The plaintiff failed to show that the University of Southern Mississippi was a school district or that she was an employee of a school district pursuant to § 37-9-101 et seq. and, therefore, the chancellor properly found that she was not entitled to relief under the School

Employment Procedures Law. Cubley v. University of S. Mississippi, 716 So. 2d 1071, 1998 Miss. LEXIS 271 (Miss. 1998).

School Employment Procedures Law is applicable to failure of county school superintendent to offer renewal contracts to school principals. De Soto County School Bd. v. Garrett, 508 So. 2d 1091, 1987 Miss. LEXIS 2546 (Miss. 1987).

Law governing procedures does apply even though employees in question, who had been school principals, were given opportunity to enter new contract as teachers; argument of school board that law only applies to termination and that principals were offered some other position and thus were not terminated was rejected; intent of School Employment Procedures Law was to provide public school employees with notice and opportunity to be heard before being removed from their positions, and adoption of position of school board would allow avoidance of due process procedures established in statute in cases involving superintendents or principals, by allowing removal of them from their position and reassigning them to lesser position with reduced responsibilities and salaries. De Soto County School Bd. v. Garrett, 508 So. 2d 1091, 1987 Miss. LEXIS 2546 (Miss. 1987).

**3. Property interest in employment.**

First year school employee did not have property interest in continued employment with school district where relevant statutes (§ 37-9-101 et seq.) provided that school administrators did not need to demonstrate good cause in justifying decision not to renew teacher's contract. Pruett v. Dumas, 914 F. Supp. 133, 1996 U.S. Dist. LEXIS 1203 (N.D. Miss.), aff'd, 98 F.3d 1339, 1996 U.S. App. LEXIS 26933 (5th Cir. Miss. 1996).

Miss. Code § 37-9-15 and Mississippi School Employment Procedures Law (37-9-101 et seq.) do not create in and of themselves protectible property interest in public school employment; § 37-9-15 does not create entitlement in nontenured teacher to reemployment unless good cause is shown by district for not accepting superintendent's recommendation of tenure, and any reason may be basis for district declining to approve re-employment of particular person. Housley v. North Panola Consolidated School Dist., 656 F. Supp. 1087, 1987 U.S. Dist. LEXIS 3290 (N.D. Miss. 1987).

The removal of a classroom teacher, who had been appointed by the school district for 9 consecutive years, without prior notice and hearing, violates the Due Process provision of the Fourteenth Amendment to the Constitution of the United States, since the teacher clearly has a property interest in her employment. Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

**4. Standard of proof.**

Decision by a school district board of trustees not to renew a school principal's employment contract was supported by substantial evidence and was not arbitrary and capricious because the board had a valid reason – the low academic performance of the principal's school – not to renew the principal's employment contract. Giles v. Shaw Sch. Dist., 203 So. 3d 1165, 2016 Miss. App. LEXIS 736 (Miss. Ct. App. 2016).

A school board was not required to justify its decision not to rehire a teacher, where the teacher had failed to show any impermissible reason for the school board's decision. Tanner v. Hazlehurst Municipal Separate School Dist., 427 So. 2d 977, 1983 Miss. LEXIS 2503 (Miss. 1983).

**5. Collateral estoppel.**

Litigation before the Mississippi Employment Security Commission of the reasons for a teacher's non-reemployment was not precluded by the doctrine of collateral estoppel, although those fact questions were fully litigated and decided before the board of trustees of the school district, acting as an administrative agency, in a non-renewal proceeding initiated by the teacher, pursuant to § 37-9-101, since in non-reemployment proceedings, as distinguished from discharge proceedings pursuant to § 37-9-59, there is no requirement that the school administration establish good cause in order to sustain a decision not to reemploy, and on the other hand, good cause amounting to willful misconduct is required before an employee may be disqualified for employment compensation benefits; thus, even though the school board found good cause for the non-reemployment, that fact finding was not essential to the judgment, as required in order to apply the doctrine of collateral estoppel. Mississippi Employment Sec. Comm'n v. Philadelphia Mun. Separate Sch. Dist., 437 So. 2d 388, 1983 Miss. LEXIS 2840 (Miss. 1983).

### OPINIONS OF THE ATTORNEY GENERAL

Teachers hired for nontraditional roles such as tutors, to serve in temporary positions (created pursuant to grants), and other educational positions which are not strictly in the classroom are not required to hold a license by the Commission on Teacher and Administrator Education, Certification and Licensure and Development and, therefore, are not covered by the School Employment Procedures Law. Barnett, April 24, 1998, A.G. Op. #98-0194.

The education employment procedures law applies to a foreign national employee as long as her work/professional visa remains in effect. Storey, Aug. 8, 2003, A.G. Op. 03-0353.

Reassignment of an employee from a position for which she does not meet the licensure requirements established by the the Commission on Teacher and Administrator Education, Certification and Licensure and Development to a position for which she does meet licensure requirements would not be a demotion requiring non-renewal notice. Kuykendall, July 6, 2004, A.G. Op. 04-0267.

### RESEARCH REFERENCES

**ALR.**

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher. 60 A.L.R.4th 260.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 234 et seq.

22 Am. Jur. Proof of Facts 563, Dismissal procedures, Dismissal of Teachers for Cause.

**CJS.**

78 C.J.S., Schools and School Districts §§ 541 et seq.

**Law Reviews.**

1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

## § 37-9-103. Definitions; applicability of Education Employment Procedures Law.

(1) As used in Sections 37-9-101 through 37-9-113, the word "employee" shall include:

(a) Any teacher, principal, superintendent or other professional personnel employed by the local school district or the Mississippi School of the Arts (MSA) for a continuous period of two (2) years with that district and required to have a valid license issued by the State Department of Education as a prerequisite of employment; or

(b) Any teacher, principal, superintendent or other professional personnel who has completed a continuous period of two (2) years of employment in a Mississippi public school district and one (1) full year of employment with the school district of current employment or the MSA, and who is required to have a valid license issued by the State Department of Education as a prerequisite of employment.

(2)(a) The Education Employment Procedures Law shall not apply to any category of employee as defined in this section employed in any school district after the Governor declares a state of emergency under the provisions of Section 37-17-6(12). The Education Employment Procedures Law shall not be applicable in any school district for the full period of time that those conditions, as defined in Section 37-17-6(12), exist.

(b) The Education Employment Procedures Law shall not apply to any category of teacher, administrator or other employee employed to work in any charter school.

(3) For purposes of Sections 37-9-101 through 37-9-113, the term "days" means calendar days.

**HISTORY: Laws, 1974, ch. 577, § 2; Laws, 2001, ch. 459, § 2; Laws, 2009, ch. 516, § 8; Laws, 2010, ch. 540, § 2; Laws, 2013, ch. 497, § 53, eff from and after July 1, 2013; Laws, 2019, ch. 432, § 8, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2)(a) by substituting "Section 37-17-6(12)" for "Section 37-17-6(11)" twice. The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Editor's Notes —** Laws of 2009, ch. 516 § 1 provides:

"SECTION 1. This act shall be entitled and may be cited as the "Children First Act of 2009."

Former § 37-165-27 provided that this section would stand repealed on July 1, 2016. Section 37-165-27 was repealed by § 92 of Chapter 497, Laws of 2013, effective July 1, 2013.

**Amendment Notes —** The 2019 amendment, in (1), inserted "or the Mississippi School of the Arts (MSA)" in (a), and inserted "or the MSA" in (b).

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. "Employee."
3. Personnel policy.

**1. In general.**

There was evidence that the employee had not completed one full year of employment with the school district when she received the non-renewal notice; she did not point to any evidence of her assertion that she had completed one full year of employment that was properly before the district court when it rendered judgment. Malcolm v. Vicksburg Warren Sch. Dist. Bd. of Trs., 709 Fed. Appx. 243, 2017 U.S. App. LEXIS 17103 (5th Cir. Miss. 2017).

Where there was substantial and manifestly good faith attempt by school superintendent and school board to comply with School Employment Procedures Act (§§ 37-9-101 to 37-9-113), and where teacher was represented by council, procedural defects will not render the board's actions unlawful. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

School Employment Procedures Act (§§ 37-9-101 to 37-9-113) requires the board to notify the employee of the reasons for its decision, and also if the matter is heard by a hearing officer to nevertheless afford the employee an opportunity to appear before the board and present a statement in her own behalf, in person or by an attorney, prior to a final decision by the board. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**2. "Employee."**

In an employment discrimination case in which a former teacher argued that she believed her disability was a motivating factor in her termination because the school district refused to give her a reason for its action, she was not covered by the Mississippi Education Employment Procedures Act. The Mississippi Education Employment Procedures Act defined employee as any teacher employed by the local school district for a continuous period of two years with that district and required to have a valid license issued by the State Department of Education as a prerequisite of employment. Burnworth v. Vicksburg Warren Sch. Dist., 2008 U.S. Dist. LEXIS 57434 (S.D. Miss. July 24, 2008).

Clear meaning of Miss. Code Ann. § 37-9-103 is that an employee must complete a second year of employment before the employee is entitled to the protections afforded "employees" by the Mississippi Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. §§ 37-9-101 through 37-9-113; therefore, when a worker was told that her contract was not being renewed before the completion of the second year, she was not protected by the EEPL. Moreover, she was also not entitled to notice under Miss. Code Ann. § 37-9-105. Hodgins v. Phila. Pub. Sch. Dist., 966 So. 2d 1279, 2007 Miss. App. LEXIS 713 (Miss. Ct. App. 2007).

Termination of the teacher's aide by the school district was proper where the aide, pursuant to Miss. Code Ann. § 37-9-103, was a non-certified employee and not required to have a license as a prerequisite of employment; the aide was an at-will employee and could be terminated for any reason. Davis v. Biloxi Pub. Sch. Dist., 937 So. 2d 459, 2005 Miss. App. LEXIS 899 (Miss. Ct. App. 2005), cert. denied, 937 So. 2d 450, 2006 Miss. LEXIS 571 (Miss. 2006), cert. denied, 549 U.S. 1224, 127 S. Ct. 1289, 167 L. Ed. 2d 107, 2007 U.S. LEXIS 2341 (U.S. 2007).

Under this section, a teacher employed as a drug educational specialist for the purpose of conducting drug education classes in various county elementary and high schools, whose immediate supervisor was the county superintendent of education rather than a school principal, constituted an employee. Jackson v. Board of Education, 349 So. 2d 550, 1977 Miss. LEXIS 2170 (Miss. 1977), but see Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**3. Personnel policy.**

Where it was clear that an employer simply neglected to update its personnel policy to conform to a change in Miss. Code Ann. § 37-9-103, there was no evidence that the employer intended to create greater protections than the Mississippi Education Employment Procedures Law of 2001, Miss. Code Ann. §§ 37-9-101 through 37-9-113. Hodgins v. Phila. Pub. Sch. Dist., 966 So. 2d 1279, 2007 Miss. App. LEXIS 713 (Miss. Ct. App. 2007).

## OPINIONS OF THE ATTORNEY GENERAL

Unless a business manager is required to hold a valid license issued by the State Department of Education as a prerequisite of employment, the position is not covered by the definition of "employee" and is not protected by the Education Employment Procedures Law of 2001. Varas, Apr. 12, 2002, A.G. Op. #02-0137.

## § 37-9-104. Written notice of determination not to offer superintendent a renewal contract.

If the board of trustees makes a preliminary determination not to offer the school district superintendent a renewal contract for a successive year, written notice of the preliminary nonreemployment determination must be given to the superintendent before February 1. However, an interim conservator appointed pursuant to Section 37-17-6(15)(a) or a school board acting on the recommendation of a school district financial advisor appointed pursuant to Section 37-9-18 is not required to comply with the time limitations prescribed in this section for recommending the reemployment of superintendents.

**HISTORY: Laws, 2001, ch. 459, § 3, eff from and after July 1, 2001.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in this section by substituting "Section 37-17-6(15)(a)" for "Section 37-17-6(14)(a)." The Joint Committee ratified the correction at its August 12, 2019, meeting.

### OPINIONS OF THE ATTORNEY GENERAL

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. Foreman, March 30, 2007, A.G. Op. #07-00119, 2007 Miss. AG LEXIS 71.

## § 37-9-105. Written notice of decision not to offer employee renewal contract; deadline for notification of nonreemployment.

If a recommendation is made by the school district not to offer an employee a renewal contract for a successive year, written notice of the proposed nonreemployment stating the reasons for the proposed nonreemployment shall be given no later than the following:

(a) If the employee is a principal, the superintendent, without further board action, shall give notice of nonreemployment on or before March 1; or

(b) If the employee is a teacher, administrator or other professional educator covered under Sections 37-9-101 through 37-9-113, the superintendent, without further board action, shall give notice of nonreemployment on or before April 15, or within ten (10) calendar days after the date that the Governor approves the appropriation bill(s) comprising the state's education budget for funding K-12, whichever date is later.

An interim conservator appointed pursuant to Section 37-17-6(15)(a) or a school board acting on the recommendation of a school district financial advisor appointed pursuant to Section 37-9-18 shall not be required to comply with the time limitations prescribed in this section for recommending the reemployment of principals, teachers, administrators or other professional educators.

**HISTORY: Laws, 1974, ch. 577, § 3; Laws, 1977, ch. 489, § 2; Laws, 1996, ch.**

**302, § 4; Laws, 1997, ch. 386, § 2; Laws, 2001, ch. 459, § 4; Laws, 2006, ch. 485, § 1; Laws, 2012, ch. 451, § 1, eff from and after July 1, 2012.**

**Joint Legislative Committee Note.--** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the last paragraph of the section by substituting "Section 37-17-6(15)(a)" for "Section 37-17-6(14)(a)." The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Cross References —** Local school board not required to comply with the time limits prescribed in this section when considering a reduction in personnel or in local supplements, see § 37-9-18.

Rights of employee under the "Education Employment Procedures Law of 2001," see § 37-9-109.

Time limitations for approval of employment contracts in school districts where state of emergency exists, see § 37-17-6.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Constitutionality.
3. Effect of failure to give notice.
4. Effect of failure to schedule hearing.
5. Good cause for nonrenewal.
6. Miscellaneous.

**1. In general.**

Where teacher sued the school board over nonrenewal of an earlier contract without the required notice, the issue was whether the new contract was sufficiently different from the teacher's previous contract to constitute a nonrenewal. Fact issues as to the relative status of the two positions and whether the difference in pay was solely the result of the different number of days legitimately required remained unresolved; the ultimate consideration in determining whether there was a demotion centered not just on pay, but on responsibility, or other relevant factors, such as whether one of the positions was a lesser one, so that, because fact questions remained relating to whether the teacher had sustained a true demotion without the required statutory notice, summary judgment for the school board was improper. Bd. of Educ. v. Fisher, 874 So. 2d 1019, 2004 Miss. App. LEXIS 503 (Miss. Ct. App. 2004).

The School Employment Procedures Law confers rights only upon a certain class of educators, including teachers, principals, and superintendents; members of the support staff of the school district who are not part of the instructional personnel do not fall within the scope of the Act. Vance v. North Panola Sch. Dist., 31 F. Supp. 2d 545, 1998 U.S. Dist. LEXIS 18225 (N.D. Miss. 1998), aff'd, 189 F.3d 470, 1999 U.S. App. LEXIS 18134 (5th Cir. Miss. 1999).

Main purpose of School Employment Procedures Act is to provide employees with notice that they will not be reemployed in sufficient time to enable them to secure alternative employment. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

School Employment Procedures Act (§§ 37-9-101 to 37-9-113) requires the board to notify the employee of the reasons for its decision, and also if the matter is heard by a hearing officer to nevertheless afford the employee an opportunity to appear before the board and present a statement in her own behalf, in person or by an attorney, prior to a final decision by the board. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**2. Constitutionality.**

Equal protection clause of the Fourteenth Amendment of U.S. Constitution does not mandate that this section be construed to apply to junior college instructors as well as to public school teachers, inasmuch as separate statutory provisions, which do not contain such notification requirement as appears in § 37-9-105, govern the operation of community and junior colleges; and since plaintiff was not member of a protected class, statutory distinction is presumed valid unless he can prove that distinction between 2 similarly situated groups lacked any rational relationship to legitimate state interest, which plaintiff failed to do. Dodds v. Childers, 933 F.2d 271, 1991 U.S. App. LEXIS 10997 (5th Cir. Miss. 1991).

**3. Effect of failure to give notice.**

Because a teacher was not provided written notice or otherwise informed within seven days of the non-renewal of the teacher's 1999-2000 employment contract as required by Miss. Code Ann. § 37-9-105, the contract was automatically renewed for the 2000-2001 school term; thus, no genuine issue of fact existed and the teacher was entitled to summary judgment. Bd. of Educ. for the Holmes County Schs v. Fisher, 2003 Miss. App. LEXIS 823 (Miss. Ct. App. Sept. 9, 2003), op. withdrawn, sub. op., 874 So. 2d 1019, 2004 Miss. App. LEXIS 503 (Miss. Ct. App. 2004).

School principals having constitutionally protected property interest in employment did not have constitutionally protectable property right in employment at rate provided by salary schedule, absent any evidence that application of schedule was school board policy; principals' contracts entitled them only to salary received during previous school year, schedule had been in existence at time previous year's contract had been executed and had not been used in calculating salaries, and board complied with all state statutory notice requirements. Gardner v. Coffeeville Sch. Dist., 982 F. Supp. 1221, 1997 U.S. Dist. LEXIS 16748 (N.D. Miss. 1997).

Under Mississippi law, if school principal is not given statutory notice of termination, employment is deemed to continue for one year at previous year's rate. Gardner v. Coffeeville Sch. Dist., 982 F. Supp. 1221, 1997 U.S. Dist. LEXIS 16748 (N.D. Miss. 1997).

If a school district employee, holding positions of school district athletic director and high school football coach, had not been notified of his nonemployment on or before April 8, 1984, then the superintendent would have been obligated to tender him a new contract, effective July 1, 1984, for the upcoming school year. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

A teacher found to have a valid contract with school board for 1982-83 school year had her contract automatically renewed for the 1983-84 school year where school board failed to give written notice before April 8, 1983 of its intention not to renew her contract for the 1983-84 term. Noxubee County School Bd. v. Cannon, 485 So. 2d 302, 1986 Miss. LEXIS 2422 (Miss. 1986).

Assuming that automatic renewal of contract is appropriate remedy for junior college teacher who does not receive timely notice of nonrenewal of teaching contract, if teacher obtains employment elsewhere, appropriate remedy is award of damages in amount lost due to failure of school board to give timely notice; teacher does not meet burden of proof on issue of damages where although teacher shows that salary decreased when teacher obtained other employment, there is no proof that teacher could have maintained higher salary had teacher received timely notice of nonrenewal. Robinson v. Board of Trustees, 477 So. 2d 1352, 1985 Miss. LEXIS 2273 (Miss. 1985).

Failure of school board to comply with notice requirements of § 37-9-105 results in automatic renewal of teacher's contract for ensuing school year at compensation specified in contract. Robinson v. Board of Trustees, 477 So. 2d 1352, 1985 Miss. LEXIS 2273 (Miss. 1985).

The notice provisions of Code § 37-9-17 and § 37-9-105 relating to termination of teaching services, are mandatory; hence, the trial court erred in dismissing an injunction suit to prevent termination of teaching services, where the superintendent of the school district failed to tender notice of termination to the teacher within seven days of April 1, 1976. McDonald v. East Jasper County School Dist., 351 So. 2d 531, 1977 Miss. LEXIS 1933 (Miss. 1977).

One purpose of this section is to give those teachers who are not to be reemployed for the ensuing year early notice of that fact so that they might seek employment elsewhere, regardless of whether the teacher works at a particular school or works at various county schools under the direct supervision of the county superintendent of education, and notwithstanding the fact that the decision not to rehire the teacher results from termination of his position, so that the failure of the county school board to abide by the mandatory dictates of this section by affording the teacher notice that he would not be reemployed constituted an automatic renewal of his outstanding contract for the ensuing year, including back pay through the time of the judicial order requiring reinstatement. Jackson v. Board of Education, 349 So. 2d 550, 1977 Miss. LEXIS 2170 (Miss. 1977), but see Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**4. Effect of failure to schedule hearing.**

Failure of board of education to schedule timely hearing regarding teacher's nonre-employment does not result in automatic renewal of teacher's contract where teacher has been provided with timely notice of nonrenewal. Noxubee County Bd. of Education v. Overton, 483 So. 2d 301, 1985 Miss. LEXIS 2344 (Miss. 1985).

**5. Good cause for nonrenewal.**

Trial court properly upheld the nonrenewal of a high school principal's employment contract because he did not follow district policy, did not meet established attendance goals for the district, did not maintain a consistently clean and sanitary school environment, and made several policy decisions without the required Board approval, and the board made a good-faith attempt to follow the applicable statutory procedures. Robey v. Cleveland Sch. Dist., 138 So. 3d 230, 2014 Miss. App. LEXIS 246 (Miss. Ct. App. 2014).

Financial adviser found that elimination of personnel and positions was required as part of the remedy for the school district's deficit. The school district had the authority to alter the offer of renewed employment that had already been made to the assistant principal even after the deadline that would usually apply to school employee contract renewal. McKnight v. Mound Bayou Pub. Sch. Dist., 879 So. 2d 493, 2004 Miss. App. LEXIS 223 (Miss. Ct. App. 2004).

The implementation of a school district's "reduction in force" policy resulting from financial difficulties does not constitute "good cause" for the termination or rescission of a teacher's contract. Byrd v. Greene County Sch. Dist., 633 So. 2d 1018, 1994 Miss. LEXIS 58 (Miss. 1994).

**6. Miscellaneous.**

In a case in which the sole remaining issue was whether the Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. § 37-9-101 et seq., applied to a teacher's head basketball coach contract with a school district and both parties filed cross-motions for summary judgment, the teacher argued unsuccessfully that he had not received notice that his coaching contract would not be renewed. While the teaching contract had been renewed, earlier, the teacher had been notified that he would not be reemployed with the district, which seemed sufficient to meet the legislative objectives of the EEPL in regard to both contracts; there was no requirement in the EEPL or the case law that a school district had to list each contract the district intended not to renew. Ladner v. Hancock County Sch. Dist., 614 F. Supp. 2d 768, 2008 U.S. Dist. LEXIS 30490 (S.D. Miss.), aff'd, 292 Fed. Appx. 346, 2008 U.S. App. LEXIS 19467 (5th Cir. Miss. 2008).

Although a county school district initially decided to renew a principal's contract, the district later became aware of events that it felt required the principal's termination. Accordingly, the principal's employment was terminated, so Miss. Code Ann. § 37-9-105(a) providing for the nonrenewal of a contract was not applicable. Simpson v. Holmes County Bd. of Educ., 2 So. 3d 799, 2009 Miss. App. LEXIS 62 (Miss. Ct. App. 2009).

Clear meaning of Miss. Code Ann. § 37-9-103 is that an employee must complete a second year of employment before the employee is entitled to the protections afforded "employees" by the Mississippi Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. §§ 37-9-101 through 37-9-113; therefore, when a worker was told that her contract was not being renewed before the completion of the second year, she was not protected by the EEPL. Moreover, she was also not entitled to notice under Miss. Code Ann. § 37-9-105. Hodgins v. Phila. Pub. Sch. Dist., 966 So. 2d 1279, 2007 Miss. App. LEXIS 713 (Miss. Ct. App. 2007).

After teacher was given notice of termination, she no longer had status as employee, and school board was not required to provide her with notice that employment contract would not be renewed for the ensuing school year. Young v. Jefferson Davis County Sch. Bd., 672 So. 2d 1219, 1996 Miss. LEXIS 140 (Miss. 1996).

Statute [Miss. Code Ann. § 37-9-105] setting March 1 as absolute final date when nonrenewal notice can be given to a principal applied to termination of high school principal, rather than statute [Miss. Code Ann. § 37-9-15] stating that no later than February 15, recommendation should be made to school board of principals to be employed for each of the schools of the districts. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

Any defect in timeliness of notice of nonrenewal of principal's contract due to service of notice on principal on March 1 rather than on February 22 date on which principal argued notice should have been served, was harmless; because statutory language was ambiguous, school board could have reached a good faith, plausible conclusion that notification by March 1 complied with statutory procedural requirements and time span between February 22 and March 1 was less than one week. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

School district superintendent, not school district, was required to give notice to high school principal of nonrenewal of his contract. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

Nontenured teacher who was denied contract renewal has right to have procedures provided under Mississippi School Employment Procedures Law (37-9-101 et seq.) followed, however, teacher did not have entitlement to his job pursuant to these statutory provisions, as Act simply affords teacher notice and forum in which to publicly clear his name or show permissible reason for school district's decision. Housley v. North Panola Consolidated School Dist., 656 F. Supp. 1087, 1987 U.S. Dist. LEXIS 3290 (N.D. Miss. 1987).

Where there was substantial and manifestly good faith attempt by school superintendent and school board to comply with School Employment Procedures Act (§§ 37-9-101 to 37-9-113), and where teacher was represented by counsel, procedural defects will not render the board's actions unlawful. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

## OPINIONS OF THE ATTORNEY GENERAL

In regard to personnel matters, Sections 37-9-3, 37-7-301(w), 37-9-15, 37-9-17, 37-9-105 and 37-9-59, with the exception of the step-aside provisions of 37-9-17, require the recommendation of the superintendent before the board may act upon the employment of non-instructional employees and certificated employees. Hand, February 1, 1995, A.G. Op. #95-0008.

## RESEARCH REFERENCES

**ALR.**
Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 A.L.R.4th 301.

**Am. Jur.**
22 Am. Jur. Pl & Pr Forms (Rev), Schools, Forms 71 et seq. (hiring; contract renewal).

**Law Reviews.**
1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

## § 37-9-107. Repealed.

Repealed by Laws, 1977, ch. 489, § 6, eff from and after July 1, 1977. [Laws, 1974, ch. 577, § 4]

**Editor's Notes —** Former § 37-9-107 contained provisions regulating the giving of notices of nonreemployment to superintendents and employees.

## § 37-9-109. Rights of employee receiving notice of nonrenewal generally; request for hearing; finality of decision.

An employee who has received notice under Section 37-9-105, upon written request from the employee received by the district within ten (10) days of receipt of the notice by the employee, shall be entitled to:

(a) Written notice of the specific reasons for nonreemployment, together with a summary of the factual basis therefor, a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, which notice shall be given at least fourteen (14) days prior to any hearing; if the district fails to provide this information to the employee, then the recommendation for nonreemployment shall be null and void, and the board shall order the execution of a contract with the employee for an additional period of one (1) year;

(b) An opportunity for a hearing at which to present matters relevant to the reasons given for the proposed nonreemployment, including any reasons alleged by the employee to be the reason for nonreemployment; provided, however, that any school superintendent whose employment has been terminated by the school board under Section 37-9-59, or whose employment contract has not been renewed by the school board shall not have the right to request a hearing before the school board or a hearing officer;

(c) Receive a fair and impartial hearing before the board or hearing officer; provided, however, that any school superintendent whose employment has been terminated by the school board under Section 37-9-59, or whose employment contract has not been renewed by the school board shall not have the right to request a hearing before the school board or a hearing officer;

(d) Be represented by legal counsel, at his own expense.

Any employee requesting a hearing shall provide the district, not less than five (5) days before the scheduled date for the hearing, a response to the specific reasons for nonreemployment, a list of witnesses and a copy of documentary evidence in support of the response intended to be presented at the hearing. If the employee fails to provide this information, then the recommendation of nonreemployment shall be final without the necessity of a hearing.

If the employee does not request a hearing, the recommendation regarding the nonreemployment of the employee shall be final.

**HISTORY: Laws, 1974, ch. 577, § 5; Laws, 1977, ch. 489, § 3; Laws, 2001, ch. 459, § 5; Laws, 2012, ch. 440, § 1, eff from and after July 1, 2012.**

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Property interest in employment.
3. Right to hearing.
4. Burden of proof.
5. Bias and recusal of hearing officer.
6. Miscellaneous.

**1. In general.**

Superintendent's due process argument was rejected in a case arising from his dismissal because he was not required to get the notice set forth in Miss. Code Ann. § 37-9-109, which covered nonrenewals, and a school district board complied with the procedures set forth in Miss. Code Ann. § 37-9-59 and Miss. Code Ann. § 37-9-111; moreover, even if § 37-9-109 did apply to the case, the superintendent failed to avail himself of the requirements of such. Wilder v. Bd. of Trs. of the Hazlehurst City Sch. Dist., 969 So. 2d 83, 2007 Miss. App. LEXIS 253 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 657 (Miss. 2007).

The terms "cause," as used in § 37-9-101, and "reason," as used in this section, are not interchangeable; thus, under § 37-9-113, a reviewing court may not assess whether the basis for nonrenewal rose to the level of "cause," but may examine the question of whether facts exist to substantiate the reason offered by the school system. Buck v. Lowndes County Sch. Dist., 1999 Miss. App. LEXIS 270 (Miss. Ct. App. May 4, 1999), rev'd, 761 So. 2d 144, 2000 Miss. LEXIS 32 (Miss. 2000).

Main purpose of School Employment Procedures Act is to provide employees with notice that they will not be reemployed in sufficient time to enable them to secure alternative employment. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

School Employment Procedures Act (§§ 37-9-101 to 37-9-113) requires the board to notify the employee of the reasons for its decision, and also if the matter is heard by a hearing officer to nevertheless afford the employee an opportunity to appear before the board and present a statement in her own behalf, in person or by an attorney, prior to a final decision by the board. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

Where the school board refused to accord a teacher a requested hearing on the basis that his employment was for less than a full school year, which the board interpreted to be a prerequisite to entitlement to notice and hearing in connection with his nonrehiring, whether the school district officials correctly interpreted and applied Mississippi law did not raise any federal issue cognizable under 42 USCA § 1983. Roberts v. Arledge, 519 F.2d 1129, 1975 U.S. App. LEXIS 12601 (5th Cir. Miss. 1975).

**2. Property interest in employment.**

Miss. Code § 37-9-15 and Mississippi School Employment Procedures Law (37-9-101 et seq.) do not create in and of themselves protectible property interest in public school employment; § 37-9-15 does not create entitlement in nontenured teacher to reemployment unless good cause is shown by district for not accepting superintendent's recommendation of tenure, and any reason may be basis for district declining to approve re-employment of particular person. Housley v.

North Panola Consolidated School Dist., 656 F. Supp. 1087, 1987 U.S. Dist. LEXIS 3290 (N.D. Miss. 1987).

The statutory protection against arbitrary dismissal of public school teachers creates a protectable property interest in public employment under the due process clause. McDonald v. Mims, 577 F.2d 951, 1978 U.S. App. LEXIS 9768 (5th Cir. Miss. 1978).

**3. Right to hearing.**

Where a teacher was terminated for accessing confidential student information, the teacher's Fourteenth Amendment procedural due process claim against the superintendent survived because a genuine issue of material fact existed regarding whether the teacher complied with the statutory notice provisions and whether the school district's decision not to afford the teacher a hearing on the nonrenewal of the teaching contract violated the essential requirements of procedural due process. Dearman v. Stone County Sch. Dist., — F. Supp. 3d —, 2014 U.S. Dist. LEXIS 37489 (S.D. Miss. Mar. 21, 2014).

Failure of board of education to schedule timely hearing regarding teacher's nonre-employment does not result in automatic renewal of teacher's contract where teacher has been provided with timely notice of nonrenewal. Noxubee County Bd. of Education v. Overton, 483 So. 2d 301, 1985 Miss. LEXIS 2344 (Miss. 1985).

**4. Burden of proof.**

Substantial evidence supported a school board's decision affirming a school district's decision not to renew a teacher's contract, and that decision was not arbitrary or capricious, because the teacher did not comply with plans of improvement after receiving multiple opportunities to improve performance. Ray v. Lowndes Cnty. Sch. Dist., 205 So. 3d 1096, 2016 Miss. App. LEXIS 802 (Miss. Ct. App. 2016).

The burden rests with the employees/teachers to present affirmative evidence that a board's decision not to renew their contracts was without factual basis; it is insufficient for the teachers to claim simply that the allegations against them are untrue. Buck v. Lowndes County Sch. Dist., 761 So. 2d 144, 2000 Miss. LEXIS 32 (Miss. 2000).

The enactment of the School Employment Procedures Law granted to teachers the limited right to notice and an opportunity to be heard by the school board prior to being terminated, but did not create a system of tenure; at such a hearing the burden of proof is upon the employee to prove affirmatively and conclusively that the reasons for termination relied upon by the school board had no basis in fact. Calhoun County Board of Education v. Hamblin, 360 So. 2d 1236, 1978 Miss. LEXIS 2340 (Miss. 1978), but see Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**5. Bias and recusal of hearing officer.**

A chancellor erred in finding that a hearing officer should have recused himself, even though the hearing officer was retained to serve in this capacity by the law firm which represented the school board in the proceedings, where he stated that he had acted as a hearing officer at the request of the law firm on 4 or 5 other occasions when the firm represented a school board and that he could be fair and impartial in making a decision in the case, and there was no evidence that he had any personal or financial interest in the outcome of the case, or that he had any feelings of personal animosity toward the terminated school district employee. Byrd v. Greene County Sch. Dist., 633 So. 2d 1018, 1994 Miss. LEXIS 58 (Miss. 1994).

Only those persons who, out of personal animosity, or personal or financial stake in the decision, are shown of such bias that the presumption of honesty and integrity of school board members is overcome, shall be disqualified from service on a hearing board based on due process considerations. Hoffman v. Board of Trustees, East Mississippi Junior College, 567 So. 2d 838, 1990 Miss. LEXIS 551 (Miss. 1990).

**6. Miscellaneous.**

Nonrenewal of school district employee's contract did not violate due process, as she received notice that district was considering her discharge and had opportunity to respond; any failure by district to comply with Mississippi law when employee's termination was recategorized as nonrenewal did not amount to violation of federal due process. Dearman v. Stone Cnty. Sch. Dist., 832 F.3d 577, 2016 U.S. App. LEXIS 14809 (5th Cir. Miss. 2016).

Clear meaning of Miss. Code Ann. § 37-9-103 is that an employee must complete a second year of employment before the employee is entitled to the protections afforded "employees" by the Mississippi Education Employment Procedures Law of 2001 (EEPL), Miss. Code Ann. §§ 37-9-101 through 37-9-113; therefore, when a worker was told that her contract was not being renewed before the completion of the second year, she was not protected by the EEPL. Moreover, she was also not entitled to notice under Miss. Code Ann. § 37-9-105. Hodgins v. Phila. Pub. Sch. Dist., 966 So. 2d 1279, 2007 Miss. App. LEXIS 713 (Miss. Ct. App. 2007).

In a dispute regarding the nonrenewal of an employment contract for a teacher/coach, due process rights under the Fourteenth Amendment were not violated by the conduct of a hearing officer; the arguments based on selective citations to testimony, ill-founded legal conclusions, and the assertion that the hearing officer became an expert witness were simply untenable. Smith v. Petal Sch. Dist., 956 So. 2d 273, 2006 Miss. App. LEXIS 672 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 289 (Miss. 2007).

The fact that an attorney for a school's board of trustees participates in a dismissal hearing, advises the board and generally runs the hearing affords the employee no grounds for complaint unless it can be shown that in fact the attorney corrupted or otherwise destroyed the impartiality of the process. Hoffman v. Board of Trustees, East Mississippi Junior College, 567 So. 2d 838, 1990 Miss. LEXIS 551 (Miss. 1990).

Nontenured teacher who was denied contract renewal has right to have procedures provided under Mississippi School Employment Procedures Law (37-9-101 et seq.) followed, however, teacher did not have entitlement to his job pursuant to these statutory provisions, as Act simply affords teacher notice and forum in which to publicly clear his name or show permissible reason for school district's decision. Housley v. North Panola Consolidated School Dist., 656 F. Supp. 1087, 1987 U.S. Dist. LEXIS 3290 (N.D. Miss. 1987).

Where there was substantial and manifestly good faith attempt by school superintendent and school board to comply with School Employment Procedures Act (§§ 37-9-101 to 37-9-113), and where teacher was represented by counsel, procedural defects will not render the board's actions unlawful. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

## OPINIONS OF THE ATTORNEY GENERAL

If a board of aldermen determines, consistent with the facts, that a member is no longer a resident of the ward he was elected to serve and is not merely temporarily residing outside his ward but has abandoned same, a vacancy would have to be declared and a special election set in accordance with Section 23-15-857. Skellie, Aug. 18, 2006, A.G. Op. 06-0377.

## RESEARCH REFERENCES

**ALR.**

Dismissal or rejection of public schoolteacher because of disloyalty. 27 A.L.R.2d 487.

Sufficiency of teacher's request for hearing, under statute requiring hearing on request before discharge. 89 A.L.R.2d 1018.

Tests of moral character or fitness as requisite to issuance of teacher's license or certificate. 96 A.L.R.2d 536.

Revocation of teacher's certificate for moral unfitness. 97 A.L.R.2d 827.

Right to dismiss public school teacher on ground that services are no longer needed. 100 A.L.R.2d 1141.

Dismissal: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 A.L.R.3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 A.L.R.3d 1047.

Libel and slander: actionability of statements imputing inefficiency or lack of qualification to public school teacher. 40 A.L.R.3d 490.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 A.L.R.3d 754.

Racial discrimination in the hiring, retention, and assignment of teachers – federal cases. 3 A.L.R. Fed. 325.

Maternity leave: mandatory maternity leave rules or policies for public school teachers as constituting violation of equal protection clause of Fourteenth Amendment to Federal Constitution. 17 A.L.R. Fed. 768.

**Am. Jur.**

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Forms 71 et seq. (hiring; contract renewal).

22 Am. Jur. Proof of Facts 563, Dismissal of Teachers for Cause.

**Law Reviews.**

The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss. L. J. 275, Fall 1988.

## § 37-9-111. Hearing.

(1) The school board, or its designee, upon request for a hearing from an employee under the terms of Sections 37-9-101 through 37-9-113, shall set the time, place and date of such hearing and notify the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the board or before a hearing officer appointed for such purpose by the board, either from among its own membership, from the staff of the school district or some other qualified and impartial person, but in no event shall the hearing officer be the staff member responsible for the initial recommendation of nonreemployment. No hearing officer may have an interest in the outcome of a hearing, nor may a hearing officer be related to a board member, any administrator making the recommendations of nonreemployment or the employee. Once a hearing officer is appointed, no ex parte communications may be made regarding any substantive provisions of the hearing.

(2) The hearing must be held in executive session unless the employee elects to have a public hearing. If an employee makes this election, however, the board or the hearing officer, as the case may be, may order any part of the hearing to be held in executive session, if, in the opinion of the board or the hearing officer, the testimony to be elicited deals with matters involving the reputation or character of another person. Notwithstanding the election by an employee for a public hearing, any testimony by minor witnesses must be held in executive session and considered confidential personnel records and confidential student records, subject to an expectation of reasonable privacy and confidentiality. Public disclosure of these records may be by court order only.

(3) The district shall present evidence, either in written or oral form, at the hearing in support of its recommendation for nonreemployment.

The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the parties a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues and to cross-examine witnesses presented at the hearing. The board or the hearing officer may require any portion of the evidence to be submitted in the form of depositions or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.

(4) The board shall cause to be made stenographic notes of the proceedings. In the event of a judicial appeal of the board's decision, the entire expense of the transcript and notes shall be assessed as court costs.

(5) The board shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the report of the hearing officer, if any, the record of the proceedings and, based solely thereon, conclude whether the proposed nonreemployment is a proper employment decision, is based upon a valid educational reason or noncompliance with school district personnel policies and is based solely upon the evidence presented at the hearing, and shall notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conclusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the board. If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his own behalf, either in person or by his attorney, prior to a final decision by the board.

(6) In conducting a hearing, the board or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in Sections 37-9-101 through 37-9-113, but may conduct such hearing in such manner as best to ascertain the rights of the parties; however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the board or hearing officer.

(7) In the event the decision of the school board is in favor of the employee, the board shall have the authority to order the execution of a contract with the employee for an additional period of one (1) year.

(8) For purposes of conducting hearings under Sections 37-9-101 through 37-9-113, the board or hearing officer shall have the authority to issue subpoenas for witnesses and to compel their attendance and the giving of evidence. Any expense connected therewith shall be borne by the party requesting the subpoenas, which shall include an appearance fee for each witness so subpoenaed not inconsistent with state laws governing payments to witnesses. In the event it is necessary to enforce or to quash a subpoena issued to compel the attendance of a witness, application shall be made with the chancery court of the county where the school board is located.

(9) This section shall not be applicable to a superintendent whose employment has been terminated by the school board under Section 37-9-59, or whose employment contract has not been renewed by the school board.

**HISTORY: Laws, 1974, ch. 577, § 6; Laws, 1977, ch. 489, § 4; Laws, 2001, ch. 459, § 6; Laws, 2012, ch. 440, § 2, eff from and after July 1, 2012.**

**Cross References —** Suspension or removal of principal or teacher; prohibited grounds for denying employment or reemployment, see § 37-9-59.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Notice of hearing.
3. Right to fair and impartial hearing.
4. Procedural rights at hearing.
5. Burden of proof.
6. Decision following hearing.
7. Miscellaneous.

**1. In general.**

Superintendent's due process argument was rejected in a case arising from his dismissal because he was not required to get the notice set forth in Miss. Code Ann. § 37-9-109, which covered nonrenewals, and a school district board complied with the procedures set forth in Miss. Code Ann. § 37-9-59 and Miss. Code Ann. § 37-9-111; moreover, even if § 37-9-109 did apply to the case, the superintendent failed to avail himself of the requirements of such. Wilder v. Bd. of Trs. of the Hazlehurst City Sch. Dist., 969 So. 2d 83, 2007 Miss. App. LEXIS 253 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 657 (Miss. 2007).

Nontenured teacher who was denied contract renewal has right to have procedures provided under Mississippi School Employment Procedures Law (37-9-101 et seq.) followed, however, teacher did not have entitlement to his job pursuant to these statutory provisions, as Act simply affords teacher notice and forum in which to publicly clear his name or show permissible reason for school district's decision. Housley v. North Panola Consolidated School Dist., 656 F. Supp. 1087, 1987 U.S. Dist. LEXIS 3290 (N.D. Miss. 1987).

The hearing procedure covering school employee dismissals under Mississippi Code § 37-9-59 is that found in Mississippi Code § 37-9-111. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

Since board of education's failure to comply with procedural requirements of § 37-9-111 constituted harmless error, chancery court erred in directing teacher's re-employment. Noxubee County Bd. of Education v. Overton, 483 So. 2d 301, 1985 Miss. LEXIS 2344 (Miss. 1985).

A 1979 incident of insubordination by a tenured teacher was relevant to facts involving renewal of the teacher's contract, which the school board was not bound to tender unless impermissible constitutional reasons existed, despite the fact the incident was not placed in the teacher's personnel file. Jackson v. Hazlehurst Municipal Separate School Dist., 427 So. 2d 134, 1983 Miss. LEXIS 2447 (Miss. 1983).

Where there was substantial and manifestly good faith attempt by school superintendent and school board to comply with School Employment Procedures Act (§§ 37-9-101 through 37-9-113), and where teacher was represented by counsel, procedural defects will not render the board's actions unlawful. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

It was the manifest purpose of the Legislature that the school district board of trustees have the right and power, as well as the duty, to proceed with removal of an employee who may have been found to have been guilty of one or more of the derelictions enumerated in § 37-9-59, although such employee may have been employed and be classified as a school district superintendent; further, such school district superintendent shall have and enjoy the right to a hearing before the school board as provided in § 37-9-111, if requested, together with all of the other rights to due process specified for principals and teachers. The power of the county superintendent of education, the superintendent of a consolidated school district or the superintendent of the municipal separate school district to remove principals and teachers is limited to those cases in which the person proposed to be removed does not request a hearing. Tutwiler v. Jones, 394 So. 2d 1346, 1981 Miss. LEXIS 1958 (Miss. 1981).

The enactment of the School Employment Procedures Law granted to teachers the limited right to notice and an opportunity to be heard by the school board prior to being terminated, but did not create a system of tenure. Calhoun County Board of Education v. Hamblin, 360 So. 2d 1236, 1978 Miss. LEXIS 2340 (Miss. 1978), but see Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**2. Notice of hearing.**

A teacher waived the 30-day notice requirement where, at the beginning of her hearing, she stipulated that she waived her right to a hearing within 30 days. Doty v. Tupelo Pub. Sch. Dist., 751 So. 2d 1212, 1999 Miss. App. LEXIS 675 (Miss. Ct. App. 1999).

Failure of board of education to schedule timely hearing regarding teacher's nonre-employment does not result in automatic renewal of teacher's contract where teacher has been provided with timely notice of nonrenewal. Noxubee County Bd. of Education v. Overton, 483 So. 2d 301, 1985 Miss. LEXIS 2344 (Miss. 1985).

Removal of a teacher from her position was a violation of her right to due process where the action was taken without first giving her copies of the written charges against her, or informing her of the identities of those who had preferred the charges, or affording her an opportunity to appear before the board of trustees when it considered the charges; advising the teacher after her removal of her right to a hearing failed to comply with the provisions of § 37-9-59 and § 37-9-111(4). Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

**3. Right to fair and impartial hearing.**

The absence of two of five members of the board of trustees on the last day of a three-day hearing on the termination of the superintendent of the school district did not violate the superintendent's due process rights to a fair hearing where the superintendent was permitted to address the full board before it rendered a decision and the superintendent showed no prejudice. Crockett v. Board of Trustees for the Mound Bayou Sch., 770 So. 2d 1030, 2000 Miss. App. LEXIS 527 (Miss. Ct. App. 2000).

The procedures surrounding a school principal's termination were not "tainted," and no violation of his due process rights occurred, even though it could have been inferred from a witness' reluctance to make a statement and from her affidavit that she felt compelled to testify or lose her job, since such "evidence" of coercion was insufficient to overcome the "presumption of honesty and integrity" in the school board members who served as adjudicators and conducted the dismissal hearing. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

A chancellor erred in finding that a hearing officer should have recused himself, even though the hearing officer was retained to serve in this capacity by the law firm which represented the school board in the proceedings, where he stated that he had acted as a hearing officer at the request of the law firm on 4 or 5 other occasions when the firm represented a school board and that he could be fair and impartial in making a decision in the case, and there was no evidence that he had any personal or financial interest in the outcome of the case, or that he had any feelings of personal animosity toward the terminated school district employee. Byrd v. Greene County Sch. Dist., 633 So. 2d 1018, 1994 Miss. LEXIS 58 (Miss. 1994).

Only those persons who, out of personal animosity, or personal or financial stake in the decision, are shown of such bias that the presumption of honesty and integrity of school board members is overcome, shall be disqualified from service on a hearing board based on due process considerations. Hoffman v. Board of Trustees, East Mississippi Junior College, 567 So. 2d 838, 1990 Miss. LEXIS 551 (Miss. 1990).

The fact that an attorney for a school's board of trustees participates in a dismissal hearing, advises the board and generally runs the hearing affords the employee no grounds for complaint unless it can be shown that in fact the attorney corrupted or otherwise destroyed the impartiality of the process. Hoffman v. Board of Trustees, East Mississippi Junior College, 567 So. 2d 838, 1990 Miss. LEXIS 551 (Miss. 1990).

Teacher's constitutional right to due process was not violated by school board despite claim that he was denied fair and impartial hearing because school board had already determined to dismiss him when it informed him of his right to public hearing, and because even though board conducted hearing through hearing officer, the ultimate decision rested with board. First, teacher had made no complaint at time of hearing about possibility of impartiality of school board, and such failure waived point. Second, where board acts both investigatively and adjudicatively, court establishes presumption of honesty and integrity in those serving as adjudicators, and in order to rebut presumption, teacher must show that board members had personal or financial stake in decision, or that there was some personal animosity toward teacher. Finally, showing that board was involved in events preceding termination is not enough, absent showing of either personal animosity, personal stake, or financial stake in decision, to overcome presumption of honesty and integrity of board members. Spradlin v. Board of Trustees, 515 So. 2d 893, 1987 Miss. LEXIS 2871 (Miss. 1987).

Where the individual members of the school board had already decided not to reemploy teacher at the time she received school superintendent's letter advising her of her right to a public hearing, she could not have been afforded an impartial forum in which to present her case. Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

Removal of a teacher from her position was a violation of her right to due process where the action was taken without first giving her copies of the written charges against her, or informing her of the identities of those who had preferred the charges, or affording her an opportunity to appear before the board of trustees when it considered the charges; advising the teacher after her removal of her right to a hearing failed to comply with the provisions of § 37-9-59 and § 37-9-111(4). Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

Under the mandatory requirement that a school board notify an employee of its decision within seven days after the completion of a hearing, a school board was without power to rescind an order reemploying a principal more than seven days following the date of the hearing; although the superintendent had the exclusive right to recommend a principal for employment, this right was subject to the power of the school board to conduct a hearing when a principal was not recommended and to order his reemployment; however, the burden of going forward rested with the employee. Lamar County School Board v. Saul, 359 So. 2d 350, 1978 Miss. LEXIS 2260 (Miss. 1978).

Where a school board was not authorized to reemploy a school librarian without the recommendation of the school principal and where the principal declined to recommend the librarian for reemployment, the librarian was not denied due process in her hearing before the board despite the librarian's contention that the board was not an impartial tribunal since it both declined to renew her contract and reviewed her case. Dampier v. Lawrence County School Dist., 344 So. 2d 130, 1977 Miss. LEXIS 2422 (Miss. 1977).

**4. Procedural rights at hearing.**

In a dispute regarding the nonrenewal of an employment contract for a teacher/coach, due process rights under the Fourteenth Amendment were not violated by the conduct of a hearing officer; the arguments based on selective citations to testimony, ill-founded legal conclusions, and the assertion that the hearing officer became an expert witness were simply untenable. Smith v. Petal Sch. Dist., 956 So. 2d 273, 2006 Miss. App. LEXIS 672 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 289 (Miss. 2007).

Hearsay evidence alone, though admissible, is insufficient to support a nonrenewal decision, and a board's findings of facts must not be based solely on hearsay evidence. Doty v. Tupelo Pub. Sch. Dist., 751 So. 2d 1212, 1999 Miss. App. LEXIS 675 (Miss. Ct. App. 1999).

The procedures followed at an administrative hearing before 3 members of the school board on a teacher's 6-month suspension violated the teacher's right to due process where, during a break in the formal proceedings, the 3 school board members told the teacher that they intended to reject suspension in favor of a formal reprimand, the teacher claimed to have relied on this information and rested her case prematurely, and the board ultimately reached a decision to suspend the teacher; although the teacher was afforded an opportunity to be heard, the school board, by its own actions, prevented her from taking full advantage of her right to present evidence in her favor by leading her to believe that there was no need to present additional evidence. Bowman v. Ferrell, 627 So. 2d 335, 1993 Miss. LEXIS 511 (Miss. 1993).

Where a suspended teacher's procedural due process rights had been violated at her hearing before the school board, the chancery court erred in ordering the teacher's reinstatement rather than a rehearing as required by § 37-9-113(4). Bowman v. Ferrell, 627 So. 2d 335, 1993 Miss. LEXIS 511 (Miss. 1993).

A school board did not improperly base its decision not to rehire a learning disability teacher based solely on hearsay testimony in violation of § 37-9-111(5) where witnesses with personal knowledge of a projected decrease in enrollment in the learning disability program testified. Stone County School Bd. v. McMaster, 573 So. 2d 753, 1990 Miss. LEXIS 855 (Miss. 1990).

School board failed to comply with statute in relation to hearing where employees were not given opportunity to present witnesses on own behalf, nor to cross-examine witnesses against them, nor presented specific instances to cover general complaints against them, nor provided with source of information concerning allegations against them. De Soto County School Bd. v. Garrett, 508 So. 2d 1091, 1987 Miss. LEXIS 2546 (Miss. 1987).

A school board did not render its decision solely on the basis of hearsay testimony in violation of § 37-9-111, where although some of a superintendent's testimony was clearly hearsay his own personal opinion as to the teacher's teaching experience and other qualifications was not hearsay. Tanner v. Hazlehurst Municipal Separate School Dist., 427 So. 2d 977, 1983 Miss. LEXIS 2503 (Miss. 1983).

School Employment Procedures Act (§§ 37-9-101 through 37-9-113) requires the board to notify the employee of the reasons for its decision, and also if the matter is heard by a hearing officer to nevertheless afford the employee an opportunity to appear before the board and present a statement in her own behalf, in person or by an attorney, prior to a final decision by the board. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

**5. Burden of proof.**

Substantial evidence supported a school district's conservator's decision to terminate a superintendent because the evidence showed the superintendent violated district policy and state law by obtaining vehicles without required competitive bids or approval of the district's board of trustees and did not properly supervise an employee who acquired the vehicles. Leigh v. Aberdeen Sch. Dist., 207 So. 3d 1276, 2016 Miss. App. LEXIS 307 (Miss. Ct. App. 2016), writ denied, 207 So. 3d 1240, 2017 Miss. LEXIS 22 (Miss. 2017).

The enactment of the School Employment Procedures Law granted to teachers the limited right to notice and an opportunity to be heard by the school board prior to being terminated, but did not create a system of tenure; at such a hearing the burden of proof is upon the employee to prove affirmatively and conclusively that the reasons for termination relied upon by the school board had no basis in fact. Calhoun County Board of Education v. Hamblin, 360 So. 2d 1236, 1978 Miss. LEXIS 2340 (Miss. 1978), but see Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

Under the mandatory requirement that a school board notify an employee of its decision within seven days after the completion of a hearing, a school board was without power to rescind an order reemploying a principal more than seven days following the date of the hearing; although the superintendent had the exclusive right to recommend a principal for employment, this right was subject to the power of the school board to conduct a hearing when a principal was not recommended and to order his reemployment; however, the burden of going forward rested with the employee. Lamar County School Board v. Saul, 359 So. 2d 350, 1978 Miss. LEXIS 2260 (Miss. 1978).

**6. Decision following hearing.**

School district's conservator did not fail to comply with an order to hold a hearing under Miss. Code Ann. § 37-9-111 regarding a superintendent's termination based on a failure to timely deliver a decision because (1) a declaration of a state of emergency in the district suspended statutory notice requirements, (2) the order did not require a new hearing, and (3) nothing suggested the conservator's final report was deficient or that a new hearing would yield new evidence. Leigh v. Aberdeen Sch. Dist., 207 So. 3d 1276, 2016 Miss. App. LEXIS 307 (Miss. Ct. App. 2016), writ denied, 207 So. 3d 1240, 2017 Miss. LEXIS 22 (Miss. 2017).

Chancery court properly upheld a school board's decision to not renew a teacher's contract for the 2004-05 school year where there was no merit to the teacher's claim that the hearing officer erred in failing to render a decision concerning the nonrenewal of his contract; the teacher was mistaken in his interpretation of Miss. Code Ann. § 37-9-111(5). In her report, the hearing officer explicitly stated that the report was not offered as an opinion as to whether the decision to not renew the teacher's contract was a proper employment decision, but was offered as a summary of the testimony. Gordon v. Lafayette County Sch. Dist., 923 So. 2d 260, 2006 Miss. App. LEXIS 145 (Miss. Ct. App. 2006).

The evidence was sufficient to support a school superintendent's termination of a school principal on the ground that he had assaulted and threatened a teacher, even though the principal and the teacher gave conflicting testimony regarding the alleged incidents, where the evidence that the principal had assaulted the teacher on one occasion and threatened her on another was "substantial"-i.e., more than a mere scintilla and providing reasonable inferences therefrom. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

At the conclusion of a hearing of school employee's dismissal, the school board must notify the employee in writing of its final decision and reasons therefor, and then appeals may be taken in accordance with Mississippi Code § 37-9-113 with respect to judicial review. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

Under the mandatory requirement that a school board notify an employee of its decision within seven days after the completion of a hearing, a school board was without power to rescind an order reemploying a principal more than seven days following the date of the hearing; although the superintendent had the exclusive right to recommend a principal for employment, this right was subject to the power of the school board to conduct a hearing when a principal was not recommended and to order his reemployment; however, the burden of going forward rested with the employee. Lamar County School Board v. Saul, 359 So. 2d 350, 1978 Miss. LEXIS 2260 (Miss. 1978).

**7. Miscellaneous.**

Since a teacher only filed complaints for original actions, and since the chancery court possessed only appellate jurisdiction, then the chancery court lacked subject-matter jurisdiction; the teacher failed to file her appeal of the school board's decision in chancery court in accordance with statutory requirements. Lacour v. Claiborne County Sch. Dist., 119 So. 3d 1128, 2013 Miss. App. LEXIS 481 (Miss. Ct. App. 2013).

Former school principal's Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., race discrimination claims, which the principal did not raise during his discharge proceedings and appeal were not barred by res judicata; although the chancery court could consider under Miss. Code. Ann. § 37-9-113 whether the principal's rights had been violated, the chancery court was limited to the record that was made before the board, and the principal could not have been expected to raise before the board his claim that the board was motivated by discriminatory animus when it upheld the principal's discharge. Floyd v. Amite County Sch. Dist., 495 F. Supp. 2d 619, 2007 U.S. Dist. LEXIS 49126 (S.D. Miss. 2007).

Former school principal's Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., race discrimination claims, which the principal did not raise during his discharge proceedings and appeal were not barred by collateral estoppel because the race discrimination claims were not raised in the discharge proceedings, and although a court of appeals found that the school superintendent and board of education had three legitimate reasons for discharging the principal, the principal could attempt to show that those reasons were pretextual. Floyd v. Amite County Sch. Dist., 495 F. Supp. 2d 619, 2007 U.S. Dist. LEXIS 49126 (S.D. Miss. 2007).

In a case involving the dismissal of a superintendent, the superintendent was unable to overcome the presumption of honesty and integrity normally given to school boards by the hearsay evidence that the superintendent presented because this alone was not a proper basis for a finding of fact. Wilder v. Bd. of Trs. of the Hazlehurst City Sch. Dist., 969 So. 2d 83, 2007 Miss. App. LEXIS 253 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 657 (Miss. 2007).

School boards are vested with the discretion and flexibility to reject the grounds for non-renewal offered by a superintendent while simultaneously determining that other grounds for non-renewal are established in the record; thus, a school principal was not "entitled" to renewal merely because the school board rejected the superintendent's grounds for non-renewal. Gelenter v. Greenville Mun. Separate Sch. Dist., 644 So. 2d 263, 1994 Miss. LEXIS 462 (Miss. 1994).

A school board had the authority to offer a school principal, whose contract was not renewed by the district superintendent, a contract for a position other than principal; a school board may extend a different contract to an employee so long as it allows the employee notice and an opportunity for a hearing. Gelenter v. Greenville Mun. Separate Sch. Dist., 644 So. 2d 263, 1994 Miss. LEXIS 462 (Miss. 1994).

## RESEARCH REFERENCES

**ALR.**

Public school teacher's self-defense, or defense of another, as justification, in dismissal proceedings, for use or threat of use of force against student. 37 A.L.R.4th 842.

**Am. Jur.**

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Forms 101 et seq. (actions for reinstatement).

22 Am. Jur. Proof of Facts 563, Dismissal of Teachers for Cause.

**Law Reviews.**

1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

## § 37-9-113. Judicial review.

(1) Any employee aggrieved by a final decision of the school board is entitled to judicial review thereof, as hereinafter provided.

(2) An appeal may be taken by such employee to the chancery court of the judicial district in which the school district is located, by filing a petition with the clerk of that court and executing and filing bond payable to the school board with sufficient sureties, in the penalty of not less than Two Hundred Dollars ($200.00), conditioned upon the payment of all of the costs of appeal, within twenty (20) days of the receipt of the final decision of the board.

(3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the school board or hearing officer to

determine if the action of the school board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the employee.

(4) No relief shall be granted based upon a court's finding of harmless error by the board in complying with the procedural requirements of Sections 37-9-101 through 37-9-113. However, in the event that there is a finding of prejudicial error in the proceedings, the cause shall be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the chancery court may appeal to the Supreme Court in the manner provided by law.

**HISTORY: Laws, 1974, ch. 577, § 7; Laws, 1977, ch. 489, § 5, eff from and after July 1, 1977.**

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Scope of appeal; jurisdiction.
3. Burden of proof.
4. Remedies; costs.
5. Miscellaneous.

**1. In general.**

Dismissal of a superintendent under Miss. Code Ann. § 37-9-59 was upheld under Miss. Code Ann. § 37-9-113 because it was not arbitrary and capricious since the grounds cited showed that problems existed at all levels, the decision was supported by substantial evidence since he was aware of the problems without receiving written notice of such based on the topics discussed in frequent board meetings, and there was no personal stake or animosity against him by a school district's board. Wilder v. Bd. of Trs. of the Hazlehurst City Sch. Dist., 969 So. 2d 83, 2007 Miss. App. LEXIS 253 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 657 (Miss. 2007).

Substantial evidence supported the Lawrence County School Board's decision not to renew the employee's contract, Miss. Code Ann. § 37-9-113, given the evidence that the employee had difficulties with the staff and trouble with the student records; the employee changed student schedules without approval and reluctantly handled emergency situations. Bowden v. Lawrence County Sch. Dist., 948 So. 2d 487, 2007 Miss. App. LEXIS 48 (Miss. Ct. App. 2007).

Under Miss. Code Ann. § 37-9-113, termination of the school superintendent was proper as there was substantial evidence presented at the hearing to support her termination; a board member did not have to recuse herself from proceedings where she stated she could be fair and impartial; board members did not conduct illegal prior public meeting. Howze-Campbell v. Mound Bayou Sch. Dist., 914 So. 2d 1284, 2005 Miss. App. LEXIS 905 (Miss. Ct. App. 2005).

Appeals of state board and agency decisions under Miss. Code Ann. § 37-9-113 generally fell under the constitutional purview of "matters in equity;" review of board and agency decisions (and, in particular, school board decisions) fell under the scope of those matters in equity which Miss. Const. Art. 6, § 159 permitted chancery courts to hear; the chancellor erred in concluding otherwise. Lawrence County Sch. Dist. v. Bowden, 912 So. 2d 898, 2005 Miss. LEXIS 173 (Miss. 2005).

School board sidestepped statutory rules in failing to properly notify the teacher of his right to a hearing; however, the teacher testified and admitted to the wrongdoing, he admitted that had he been given notice pursuant to statute, that his defense would not have been any different, and the appellate court's reversal and remand to order a proper hearing in comport with statute would have had no different effect on the employee's preparation of his defense. Aberdeen Mun. Sch. Dist. v. Blaylock, 864 So. 2d 955, 2003 Miss. App. LEXIS 668 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 64 (Miss. 2004).

In reviewing a school district's decision not to renew an employee's contract, the Supreme Court's inquiry concerns whether the nonrenewal decision was (1) made for a reason not specifically prohibited by law, (2) made in accordance with the applicable procedural requirements, (3) supported by substantial evidence, and (4) arbitrary or capricious. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

At the conclusion of a hearing of school employee's dismissal, the school board must notify the employee in writing of its final decision and reasons therefor, and then appeals may be taken in accordance with Mississippi Code § 37-9-113 with respect to judicial review. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

Since board of education's failure to comply with procedural requirements of § 37-9-111 constituted harmless error, chancery court erred in directing teacher's re-employment. Noxubee County Bd. of Education v. Overton, 483 So. 2d 301, 1985 Miss. LEXIS 2344 (Miss. 1985).

**2. Scope of appeal; jurisdiction.**

Dismissing a school superintendent's Fourteenth Amendment due process claim contesting termination due to a failure to appeal pursuant to Miss. Code Ann. § 37-9-113 erred because (1) the superintendent sufficiently alleged denial of a property interest in employment without a constitutionally required pre-termination hearing, and (2) any appeal would have only provided a constitutionally inadequate post-termination hearing. Greene v. Greenwood Pub. Sch. Dist., 890 F.3d 240, 2018 U.S. App. LEXIS 12510 (5th Cir. Miss. 2018).

Decision by a school district board of trustees not to renew a school principal's employment contract was supported by substantial evidence and was not arbitrary and capricious because the board had a valid reason – the low academic performance of the principal's school – not to renew the principal's employment contract. Giles v. Shaw Sch. Dist., 203 So. 3d 1165, 2016 Miss. App. LEXIS 736 (Miss. Ct. App. 2016).

Chancery court properly dismissed a high school principal's appeal of his termination due to lack of jurisdiction because, while the principal's notice of appeal or petition to appeal was filed timely, he failed to timely perfect his appeal by filing the statutorily required $200 bond, there were no extenuating circumstances that would warrant overlooking the principal's failure to pay the bond, and the principal's excuse was merely that he was not aware that a bond needed to be filed, despite the distinct and unambiguous statutory language requiring the bond payment. Lamberth v. S. Panola Sch. Dist., 186 So. 3d 407, 2016 Miss. App. LEXIS 80 (Miss. Ct. App. 2016).

Substantial evidence supported a school board's decision under Miss Code Ann. § 37-9-113(3)(a)-(c) declining to renew a school principal's employment. Although the chancellor's judgment implied that she believed the principal's allegation that his nonrenewal was retaliatory, the chancellor did not go so far as to find merit to the principal's claim. Cleveland Sch. Dist. v. Fisher, 182 So. 3d 459, 2015 Miss. App. LEXIS 146 (Miss. Ct. App. 2015), cert. denied, 181 So. 3d 1010, 2016 Miss. LEXIS 24 (Miss. 2016).

Since a teacher only filed complaints for original actions, and since the chancery court possessed only appellate jurisdiction, then the chancery court lacked subject-matter jurisdiction; the teacher failed to file her appeal of the school board's decision in chancery court in accordance with statutory requirements. Lacour v. Claiborne County Sch. Dist., 119 So. 3d 1128, 2013 Miss. App. LEXIS 481 (Miss. Ct. App. 2013).

Chancery court properly concluded that a teacher's claim for relief was barred by the statute of limitations; since the teacher failed to properly perfect in chancery court an appeal of the school district's decision affirming her termination, and since she failed to obtain federal ancillary jurisdiction over her state-law claim, then no tolling of the statute of limitations occurred with respect to that state-law right of appeal. Lacour v. Claiborne County Sch. Dist., 119 So. 3d 1128, 2013 Miss. App. LEXIS 481 (Miss. Ct. App. 2013).

Chancery court correctly determined that it lacked subject matter jurisdiction because the teacher failed to file her appeal of the school board's decision affirming her termination in accordance with statutory requirements; failure to properly perfect the appeal barred the chancery court's jurisdiction. Lacour v. Claiborne County Sch. Dist., 119 So. 3d 1128, 2013 Miss. App. LEXIS 481 (Miss. Ct. App. 2013).

School board's decision not to renew the employment contract of a former employee was appropriate because the decision was not arbitrary or capricious in that substantial evidence supported the board's decision to eliminate the employee's position as personnel director, and the plain language of the reduction in force policy provided no requirement to offer the employee some other administrative or instructional position. Carter v. Cleveland Sch. Dist., 118 So. 3d 673, 2013 Miss. App. LEXIS 446 (Miss. Ct. App. 2013).

Chancery court did not err in granting a school board's motion to dismiss a teacher's appeal of the board's decision to terminate her employment because the teacher failed to file a bond of $ 200 within twenty days of the receipt of the final decision of the board, as required under Miss. Code Ann. § 37-9-113(2); the teacher's failure to file a timely bond was jurisdictional and was fatal to her appeal. Breland v. Harrison County Sch. Bd., 96 So. 3d 61, 2012 Miss. App. LEXIS 504 (Miss. Ct. App. 2012).

Chancery court did not err in granting a school board's motion to dismiss a teacher's appeal of the board's decision to terminate her employment because the teacher's failure to file her notice of appeal within twenty days of the receipt of the board's decision in accordance with Miss. Code Ann. § 37-9-113(2) deprived the chancery court of jurisdiction; section 37-9-113(2) unambiguously required filing a petition within twenty days of the receipt of the final decision of the board. Breland v. Harrison County Sch. Bd., 96 So. 3d 61, 2012 Miss. App. LEXIS 504 (Miss. Ct. App. 2012).

In a case in which a school district (District) appealed a decision by a chancery court finding that the school board's (Board) decision not to uphold a superintendent's recommendation to renew appellee employee's contract was not supported by any substantial evidence and was arbitrary and capricious, the District argued that the chancellor failed to follow the proper standard of review under Miss. Code Ann. § 37-9-113. The chancellor went beyond the record of the hearing officer since the only issue before the hearing officer and, subsequently, the chancellor, was whether the Board's decision to refuse the renewal of a part-time contract, because they felt a full-time contract was beneficial, was arbitrary and capricious; the issue of whom would be hired for the full-time position, which did not exist, was irrelevant to that inquiry. Smith County Sch. Dist. v. Campbell, 18 So. 3d 335, 2009 Miss. App. LEXIS 646 (Miss. Ct. App. 2009).

In a case in which a school district (District) appealed a decision by a chancery court finding that the school board's decision not to uphold a superintendent's recommendation to renew appellee employee's contract was not supported by any substantial evidence and was arbitrary and capricious, the District argued that the chancellor failed to follow the proper standard of review under Miss. Code Ann. § 37-9-113. The chancellor abused his discretion by taking judicial notice that school districts around the state had employees who retired and were rehired after 45 days on a half-time basis at half-time salary; while the chancellor might know that to be true and accurate, that fact was not generally known in the territorial jurisdiction of the trial court or capable of accurate determination by a source whose accuracy could not be questioned. Smith County Sch. Dist. v. Campbell, 18 So. 3d 335, 2009 Miss. App. LEXIS 646 (Miss. Ct. App. 2009).

Former school principal's Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., race discrimination claims, which the principal did not raise during his discharge proceedings and appeal were not barred by res judicata; although the chancery court could consider under Miss. Code. Ann. § 37-9-113 whether the principal's rights had been violated, the chancery court was limited to the record that was made before the board, and the principal could not have been expected to raise before the board his claim that the board was motivated by discriminatory animus when it upheld the principal's discharge. Floyd v. Amite County Sch. Dist., 495 F. Supp. 2d 619, 2007 U.S. Dist. LEXIS 49126 (S.D. Miss. 2007).

Chancery court properly upheld a school board's decision to not renew a teacher's contract for the 2004-05 school year. The chancellor did not err in not making specific findings of fact pursuant to Miss. R. Civ. P. 52(a), since the board was the finder of fact, not the chancellor. Gordon v. Lafayette County Sch. Dist., 923 So. 2d 260, 2006 Miss. App. LEXIS 145 (Miss. Ct. App. 2006).

Discharge of principal was affirmed because the chancellor acted against the mandate of Miss. Code Ann. § 37-9-113(3), and was in error in looking beyond the record before the school board in overturning the board's decision. The board's decision to discharge the principal was supported by substantial evidence–he had no authority to levy tobacco fines on students, and was unable to account for the money from the fines. Amite County Sch. Dist. v. Floyd, 935 So. 2d 1034, 2005 Miss. App. LEXIS 867 (Miss. Ct. App. 2005), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 421 (Miss. 2006).

The terms "cause," as used in § 37-9-101, and "reason," as used in § 37-9-109, are not interchangeable; thus, under this section, a reviewing court may not assess whether the basis for nonrenewal rose to the level of "cause," but may examine the question of whether facts exist to substantiate the reason offered by the school system. Buck v. Lowndes County Sch. Dist., 1999 Miss. App. LEXIS 270 (Miss. Ct. App. May 4, 1999), rev'd, 761 So. 2d 144, 2000 Miss. LEXIS 32 (Miss. 2000).

In an original proceeding by a school teacher for reinstatement following her dismissal, the chancery court erred in failing to sustain the defendants' demurrer where, although there may have been some procedural defects on the part of the school board in the removal of the teacher, there had been a substantial and a manifestly good faith attempt by the superintendent and the school board to comply with the law and the teacher was limited to seeking review of the decision by appeal under § 37-9-113; the chancellor was without jurisdiction to entertain an original proceeding challenging the decision of the school board. Cox v. Thomas, 403 So. 2d 135, 1981 Miss. LEXIS 2162 (Miss. 1981).

Requirement that chancery court grant de novo review of determinations of school board violated Mississippi constitutional separation of powers; the proper scope of appeal of an administrative decision is limited to finding whether it was supported by substantial evidence, was arbitrary or capricious, was within the power of the administrative agency, or violated a statutory or constitutional right of the complaining party. Henderson v. Stevison, 326 So. 2d 799, 1976 Miss. LEXIS 1762 (Miss. 1976).

**3. Burden of proof.**

The burden rests with the employees/teachers to present affirmative evidence that a board's decision not to renew their contracts was without factual basis; it is insufficient for the teachers to claim simply that the allegations against them are untrue. Buck v. Lowndes County Sch. Dist., 761 So. 2d 144, 2000 Miss. LEXIS 32 (Miss. 2000).

At a hearing before the school board, the superintendent bears the burden to prove by a preponderance of the evidence adequate grounds for dismissal of a school employee. Merchant v. Board of Trustees, 492 So. 2d 959, 1986 Miss. LEXIS 2526 (Miss. 1986).

**4. Remedies; costs.**

Where a suspended teacher's procedural due process rights had been violated at her hearing before the school board, the chancery court erred in ordering the teacher's reinstatement rather than a rehearing as required by § 37-9-113(4).

Bowman v. Ferrell, 627 So. 2d 335, 1993 Miss. LEXIS 511 (Miss. 1993).

Municipal separate school district is agency exempted by § 11-51-101 from giving appeal bond; accordingly, cost of appeal bond posted by school board in appeal by board from decision of Chancery Court reversing board decision made under § 37-9-111 may not be assessed as court costs. Board of Trustees v. Gates, 467 So. 2d 216, 1985 Miss. LEXIS 1987 (Miss. 1985).

Fees which may be assessed as court costs for preparation of transcript of nonremployment held pursuant to § 37-9-111 upon judicial appeal of school board's decision on hearing must be same whether charged by official court reports or freelance reporters; accordingly, even though board has prepaid statement submitted by freelance reporter, proper charge to litigation is that set in § 9-13-33[Repealed]. Board of Trustees v. Gates, 467 So. 2d 216, 1985 Miss. LEXIS 1987 (Miss. 1985).

Entire expense of transcript and notes to be assessed as court costs in event of judicial appeal of board's decision is expense otherwise provided by statute, and does not include cost paid by board in excess of amount provided by statute. Board of Trustees v. Gates, 467 So. 2d 216, 1985 Miss. LEXIS 1987 (Miss. 1985).

**5. Miscellaneous.**

Former school principal's Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., race discrimination claims, which the principal did not raise during his discharge proceedings and appeal were not barred by collateral estoppel because the race discrimination claims were not raised in the discharge proceedings, and although a court of appeals found that the school superintendent and board of education had three legitimate reasons for discharging the principal, the principal could attempt to show that those reasons were pretextual. Floyd v. Amite County Sch. Dist., 495 F. Supp. 2d 619, 2007 U.S. Dist. LEXIS 49126 (S.D. Miss. 2007).

Decision from a school district's board of trustees not to renew an employment contract was not arbitrary or capricious because an employment contract and rider referred to the single position of teacher/coach; therefore, the failure to attend workouts in the summer months constituted a sufficient basis for nonrenewal. Smith v. Petal Sch. Dist., 956 So. 2d 273, 2006 Miss. App. LEXIS 672 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 289 (Miss. 2007).

Any defect in timeliness of notice of nonrenewal of principal's contract due to service of notice on principal on March 1 rather than on February 22 date on which principal argued notice should have been served, was harmless; because statutory language was ambiguous, school board could have reached a good faith, plausible conclusion that notification by March 1 complied with statutory procedural requirements and time span between February 22 and March 1 was less than one week. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

The evidence was sufficient to support a school superintendent's termination of a school principal on the ground that he had assaulted and threatened a teacher, even though the principal and the teacher gave conflicting testimony regarding the alleged incidents, where the evidence that the principal had assaulted the teacher on one occasion and threatened her on another was "substantial"-i.e., more than a mere scintilla and providing reasonable inferences therefrom. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

A school principal who was reassigned as an assistant principal at the same certification level and annual pay was entitled to an appeal under § 37-9-113. Gelenter v. Greenville Mun. Separate Sch. Dist., 644 So. 2d 263, 1994 Miss. LEXIS 462 (Miss. 1994).

The procedures followed at an administrative hearing before 3 members of the school board on a teacher's 6-month suspension violated the teacher's right to due process where, during a break in the formal proceedings, the 3 school board members told the teacher that they intended to reject suspension in favor of a formal reprimand, the teacher claimed to have relied on this information and rested her case prematurely, and the board ultimately reached a decision to suspend the teacher; although the teacher was afforded an opportunity to be heard, the school board, by its own actions, prevented her from taking full advantage of her right to present evidence in her favor by leading her to believe that there was no need to present additional evidence. Bowman v. Ferrell, 627 So. 2d 335, 1993 Miss. LEXIS 511 (Miss. 1993).

Upon a finding, supported by evidence, that the real reason for a county school board's failure to rehire a high school teacher and guidance counselor was due to the employee's constitutionally protected political activities, and not due to any need to reduce counseling staff, which was the reason advanced by the school board for the non-hire, the teacher was entitled to be rehired with backpay. Claiborne County Bd. of Education v. Martin, 500 So. 2d 981, 1986 Miss. LEXIS 2882 (Miss. 1986).

Teacher who reports to work at wrong school as result of administrative problems resulting in teacher not being assigned any duties is not being insubordinate or neglecting duty and decision of school board terminating employment on grounds of insubordination and neglect of duty will be overturned on appeal as arbitrary and capricious. Noxubee County Bd. of Education v. Givens, 481 So. 2d 816, 1985 Miss. LEXIS 2319 (Miss. 1985).

Presence of uncorroborated hearsay evidence in support of school board's determination to discharge teacher is not sufficient to avoid judicial determination that school board's ruling was arbitrary or capricious where testimony of eyewitnesses provide no corroboration of hearsay testimony on points that might arguably be said to justify termination. Noxubee County Bd. of Education v. Givens, 481 So. 2d 816, 1985 Miss. LEXIS 2319 (Miss. 1985).

The removal of a classroom teacher, who had been appointed by the school district for 9 consecutive years, without prior notice and hearing, violates the Due Process provision of the Fourteenth Amendment to the Constitution of the United States, since the teacher clearly has a property interest in her employment. Cantrell v. Vickers, 495 F. Supp. 195, 1980 U.S. Dist. LEXIS 12914 (N.D. Miss. 1980).

### RESEARCH REFERENCES

**Am. Jur.**

22 Am. Jur. Proof of Facts 563, Dismissal of Teachers for Cause.

## GROUP HEALTH, HOSPITALIZATION AND MAJOR MEDICAL INSURANCE FOR FULL-TIME CERTIFICATED AND NON-CERTIFICATED PERSONNEL

Sec.
37-9-151 and 37-9-153. Repealed.
37-9-155 and 37-9-157. Repealed.

### §§ 37-9-151 and 37-9-153. Repealed.

Repealed by § 11, Chapter 511, Laws of 1999.

37-9-151 [Laws, 1988, ch. 487, § 9; Laws, 1999, ch. 511, § 11.]
37-9-153 [Laws, 1988, ch. 487, § 10; Laws, 1999, ch. 511, § 11.]

**Editor's Notes** — Former § 37-9-151 provided definitions for terms used in §§ 37-9-151 through 37-9-157.

Former § 37-9-153 authorized the design of a plan of group health, hospitalization and major medical insurance for all full-time school district personal.

## §§ 37-9-155 and 37-9-157. Repealed.

Repealed by Laws, 1988, ch. 487, §§ 11 (5) and 12 (5), effective from and after June 30, 1989.

§ 37-9-155. [Laws, 1988, ch. 487, § 11]

§ 37-9-157. [Laws, 1988, ch. 487, § 12]

**Editor's Notes** — Former § 37-9-155 authorized the State Fiscal Management Board to execute a contract to provide benefits for group health, hospitalization and major medical insurance for full-time certificated and non-certificated personnel.

Former § 37-9-157 contained provisions for participation in a group health, hospitalization and major medical insurance plan for full-time certificated and non-certificated personnel.

## BEGINNING TEACHER SUPPORT PROGRAM

Sec.
37-9-201. Definitions.
37-9-203. Legislative findings.
37-9-205. Establishment of beginning teacher support program.
37-9-207. Application by school district to participate in program.
37-9-209. Workshops to provide training for mentor teachers and beginning teachers.
37-9-211. Selection, nature and extent of duties of mentor teachers.
37-9-213. Powers and duties of Mississippi Teacher Center.

## § 37-9-201. Definitions.

As used in Sections 37-9-201 through 37-9-213:

(a) "Beginning teacher" means a teacher who:

(i) Possesses a teaching license issued by the Commission on Teacher and Administrator Education, Certification and Licensure and Development;

(ii) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(iii) Has taught fewer than ninety (90) consecutive days, or one hundred eighty (180) days total, as a licensed teacher in any public school.

(b) "District" means any local school district.

(c) "Formal assistance" means a program provided by a mentor teacher to a beginning teacher that includes, but is not limited to, direct classroom observation and consultation; assistance in instructional planning and preparation; support in implementation and delivery of classroom instruction; and other assistance intended to enhance the professional performance and development of the beginning teacher.

(d) "Mentor teacher" means a teacher who:

(i) Possesses a standard teaching personnel service or administrative license issued by the Commission on Teacher and Administrator Education, Certification and Licensure and Development;

(ii) At the time of selection, is employed under contract primarily as a classroom teacher by a public school district or is retired from a public school district;

(iii) Has successfully taught for three (3) or more years as a licensed teacher in any public school;

(iv) Has been selected and trained as described in Section 37-9-211; and

(v) Has demonstrated mastery of teaching skills and subject matter knowledge.

(e) "Teacher" means a licensed employee of a local school district who has direct responsibility for instruction, coordination of educational programs or supervision of teachers and who is compensated for services from public funds.

**HISTORY: Laws, 1991, ch. 502, § 3; Laws, 1997, ch. 545, § 23; Laws, 1999, ch. 430, § 1, eff from and after July 1, 1999.**

**Cross References** — Commission on teacher and administrator education, certification and licensure and development, see § 37-3-2.

## § 37-9-203. Legislative findings.

The Legislature finds that:

(a) The quality of teaching in the public schools is of vital importance to the future of this state;

(b) This state has a special interest in insuring that the induction of beginning teachers into their profession is conducive to their professional growth and development; and

(c) The formal assignment of mentor teachers who have demonstrated mastery of teaching skills and subject matter knowledge should substantially improve the induction and professional growth of beginning teachers in this state, as well as provide mentor teachers with additional and valuable opportunities to enhance their own professional growth.

**HISTORY: Laws, 1991, ch. 502, § 4, eff from and after July 1, 1991.**

**Cross References** — Selection, nature and extent of duties of mentor teachers, see § 37-9-211.

## § 37-9-205. Establishment of beginning teacher support program.

(1) The Mississippi Teacher Center of the State Department of Education shall establish a beginning teacher support program to provide eligible beginning teachers in this state with continued and sustained support from a formally assigned mentor teacher during the first full year of teaching.

(2) After the 1992-1993 school year, any district is eligible to participate in the beginning teacher support program.

(3) Two (2) or more districts may operate jointly a beginning teacher support program if they meet all the requirements of Sections 37-9-201 through 37-9-213.

(4) Educational consortia established for approved teacher education programs pursuant to rules of the Mississippi Teacher Center are eligible to operate a beginning teacher support program to serve beginning teachers in a participating school district.

(5) To the extent practicable, school districts may coordinate with institutions of higher education in the design, implementation and evaluation of mentorship programs.

**HISTORY: Laws, 1991, ch. 502, § 5; Laws, 1995, ch. 427, § 1, eff from and after July 1, 1995.**

**Cross References —** Mississippi Teacher Center, see § 37-149-1 et seq.

## § 37-9-207. Application by school district to participate in program.

Each district that wishes to participate in the beginning teacher support program shall submit a formal application to the Mississippi Teacher Center no later than September 15 of each school year, according to rules of the Mississippi Teacher Center. By that date, districts shall inform the department of:

(a) The names of all eligible beginning teachers employed by the district and a description of their teaching assignments and extracurricular duties;

(b) The names of mentor teachers selected by a district and a description of their teaching assignments and the endorsement area in which they are certified to teach;

(c) A description of the content and calendar of the proposed beginning teacher support program. The program must provide a minimum of ninety (90) hours of direct contact between mentor teachers and beginning teachers, including observation of or assistance with classroom teaching, or both, during the school day;

(d) A description of the amount and nature of each eligible beginning teacher's classroom and extracurricular duties and assurance that these duties are not unreasonable for a beginning teacher; and

(e) A certification that no eligible beginning teacher is or may be misassigned outside the teacher's endorsement area, except as provided for by rules of the Mississippi Teacher Center.

**HISTORY: Laws, 1991, ch. 502, § 6; Laws, 1995, ch. 427, § 2, eff from and after July 1, 1995.**

**Cross References —** Selection, nature and extent of duties of mentor teachers, see § 37-9-211.

Mississippi Teacher Center, see § 37-149-1 et seq.

## § 37-9-209. Workshops to provide training for mentor teachers and beginning teachers.

After consulting with representatives of teachers, administrators, school boards, schools of education, the institutions of higher learning and such others as it considers appropriate, the Mississippi Teacher Center shall develop or approve workshops to provide training for mentor teachers and beginning teachers.

**HISTORY: Laws, 1991, ch. 502, § 7; Laws, 1995, ch. 427, § 3, eff from and after July 1, 1995.**

**Cross References —** Selection, nature and extent of duties of mentor teachers, see § 37-9-211.

Mississippi Teacher Center, see § 37-149-1 et seq.

## § 37-9-211. Selection, nature and extent of duties of mentor teachers.

(1) The selection, nature and extent of duties of mentor teachers shall be determined by the school district. The following guidelines shall apply:

(a) No teacher shall be designated as a mentor teacher unless willing to perform in that role;

(b) No mentor teacher shall participate in the evaluation of beginning teachers;

(c) Each mentor teacher shall complete successfully a training workshop provided or approved by the Mississippi Teacher Center prior to participating in the beginning teacher support program; and

(d) If a mentor teacher receives additional release time to support a beginning teacher, it is expected that the total workload of other teachers regularly employed by the school district should not increase in any substantial manner.

(2) A district may: (a) compensate mentor teachers from any available funds for additional duties to support a beginning teacher which are performed after regular school hours; (b) grant additional release time to mentor teachers for additional duties to support a beginning teacher which are performed after regular school hours; and (c) employ and compensate substitute teachers from any available funds for assuming the regular teaching duties of mentor teachers who are participating in the beginning teacher program.

**HISTORY: Laws, 1991, ch. 502, § 8; Laws, 1995, ch. 427, § 4; Laws, 1999, ch. 430, § 2, eff from and after July 1, 1999.**

**Cross References —** Workshops to provide training for mentor teachers and beginning teachers, see § 37-9-209.

Mississippi Teacher Center, see § 37-149-1 et seq.

## § 37-9-213. Powers and duties of Mississippi Teacher Center.

The Mississippi Teacher Center shall be responsible for the regular and ongoing evaluation of the beginning teacher support program and may contract for such evaluation. The evaluation shall include, but not be limited to, assessments of the following:

(a) A survey and follow-up of all eligible mentor teachers and beginning teachers and appropriate district officials, to assess satisfaction with and the effectiveness of the beginning teacher support program;

(b) The amount and quality of the contact time between mentor teachers and beginning teachers;

(c) The effectiveness of workshops and other training required under Sections 37-9-201 through 37-9-211;

(d) The effectiveness of the mentor program in enhancing the professional development and retention of new teachers in the district;

(e) The desirability of extending this assistance program to students participating in graduate level teacher preparation programs similar to those which have been proposed by the Board of Trustees of State Institutions of Higher Learning; and

(f) The desirability of extending this assistance program to all probationary teachers.

**HISTORY: Laws, 1991, ch. 502, § 9; Laws, 1995, ch. 427, § 5, eff from and after July 1, 1995.**

**Cross References** — Workshops to provide training for mentor teachers and beginning teachers, see § 37-9-209.

Selection, nature and extent of duties of mentor teachers, see § 37-9-211.

Board of Trustees of State Institutions of Higher Learning generally, see § 37-101-1 et seq.

## BEGINNING PRINCIPAL SUPPORT PILOT PROGRAM

Sec.
37-9-251. Definitions; establishment under School Executive Management Institute; participation in program; mentoring program workshops; selection and duties of mentor principals.

### § 37-9-251. Definitions; establishment under School Executive Management Institute; participation in program; mentoring program workshops; selection and duties of mentor principals.

(1) The following words and phrases shall have the meanings ascribed in this subsection unless the context clearly indicates otherwise:

(a) "Beginning principal" means a principal who:

(i) Possesses an administrator's license issued by the Commission on Teacher and Administrator Education, Certification and Licensure and Development;

(ii) Is employed as a principal by a public school district; and

(iii) Has served fewer than ninety (90) consecutive days, or one hundred eighty (180) days total, as a licensed principal in any public school.

(b) "Formal assistance" means a program provided by a mentor principal to a beginning principal which includes, but is not limited to: direct administrative observation and consultation; assistance in administrative planning and preparation; support in implementation and delivery of principal administrative responsibilities; and support in the administrative functions of school leadership, student psychology, student health, student drug abuse, human relations, multicultural and multiethnic relations, crisis management and other assistance intended to enhance the professional performance and development of the beginning principal.

(c) "Mentor principal" means a principal who:

(i) Possesses a standard administrative license issued by the Commission on Teacher and Administrator Education, Certification and Licensure and Development;

(ii) At the time of selection, is employed under contract primarily as a principal by a public school district or is retired from a public school district;

(iii) Has successfully served for three (3) or more years as a licensed principal in any public school; and

(iv) Has demonstrated mastery of administrative skills and subject matter knowledge and has been selected and trained as described in this section.

(2) The School Executive Management Institute of the State Department of Education shall establish a Beginning Principal Support Pilot Program to provide eligible beginning principals in this state with continued and sustained support from a formally assigned mentor principal during the first full year of principal service.

(3) The State Board of Education shall select one (1) school district in each of the five (5) Mississippi congressional districts, pursuant to the application process provided for in this section, to participate in the Beginning Principal Support Pilot Program. Two (2) or more districts may operate jointly a Beginning Principal Support Pilot Program if the districts meet all the requirements of this section. School districts may coordinate with institutions of higher learning in the design, implementation and evaluation of mentorship programs. Private educational consortia established for approved principal education programs are eligible to operate a Beginning Principal Support Pilot Program to serve beginning principals in a participating school district.

(4) Each district that wishes to participate in the Beginning Principal Support Pilot Program shall submit a formal application to the School Executive Management Institute according to rules of the institute. Along with an application, districts shall provide the institute with the following information:

(a) The names of all eligible beginning principals employed by the district and a description of their administrative duties;

(b) The names of mentor principals selected by a district and a description of their administrative assignments and endorsements;

(c) A description of the content and calendar of the proposed Beginning Principal Support Pilot Program. The program shall provide a minimum of ninety (90) hours of direct contact between mentor principals and beginning principals, including observation or assistance with administrative duties, or both, during the school day; and

(d) A description of the amount and nature of each eligible beginning principal's administrative duties.

(5) After consulting with representatives of administrators, school boards, schools of education of the institutions of higher learning and such others as it considers appropriate, the School Executive Management Institute shall develop or approve workshops to provide training for mentor principals and beginning principals.

(6) The selection, nature and extent of duties of mentor principals shall be determined by the school district, subject to the following:

(a) No principal shall be designated as a mentor principal unless willing to perform in that role;

(b) Each mentor principal shall complete successfully a training workshop provided or approved by the School Executive Management Institute in the Beginning Principal Support Pilot Program; and

(c) Participating school districts shall be fully authorized to compensate mentor principals, grant release time for mentor principals and employ and compensate substitute administrators for additional duties performed under the Beginning Principal Support Pilot Program which are in addition to regular school day responsibilities.

(7) The School Executive Management Institute shall be responsible for the regular and ongoing evaluation of the Beginning Principal Support Pilot Program and may contract for such evaluation. The institute shall report to the State Board of Education and the Legislature in the 2003 Regular Session on the desirability of extending this assistance program statewide.

**HISTORY: Laws, 1999, ch. 359, § 1; Laws, 2000, ch. 346, § 1, eff from and after passage (approved Apr. 16, 2000).**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Commission on teacher and administrator education, certification and licensure and development, see § 37-3-2.

School Executive Management Institute, see § 37-3-4.

Beginning principal support pilot program, see § 37-9-251.

# CHAPTER 11.

# GENERAL PROVISIONS PERTAINING TO EDUCATION

Sec.
37-11-1. Assignment of pupil to class where presence of pupil would have adverse effect on class; request by parent or guardian to place twins or other multiples in same or separate classrooms.
37-11-3. Separation of students according to sex.
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37-11-18.1. Expulsion of habitually disruptive students aged 13 years or older upon third occurrence of disruptive behavior within school year.
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37-11-23. Disturbing public school sessions or meetings.
37-11-25. Interest in proceeds or profits of sale or rental of property used in public schools.
37-11-27. Interest in contracts involving public schools.
37-11-29. Reporting of unlawful activity or violent act on educational property or during school related activity; authority of law enforcement officers; reporting of disposition of charges against student; liability of school personnel participating in reporting.
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37-11-33. Fees for reports pursuant to § 37-11-29; disposition of reports.
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37-11-37. Public high school fraternity, sorority or secret society; definition.
37-11-39. Public high school fraternity, sorority or secret society; illegality.
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37-11-43. Public high school fraternity, sorority or secret society; duties of boards of trustees.
37-11-45. Public high school fraternity, sorority or secret society; solicitation of pupils.
37-11-47. Stonewall Jackson Memorial Board; Memorial Fund.

Sec.
37-11-49. Wearing of approved eye protective devices required during participation in certain vocational, industrial arts, and chemical-physical laboratory courses of instruction.
37-11-51. Documents exempt from Public Records Act.
37-11-53. School district discipline plans; appearance by parents, guardians or custodians at discipline conferences; recovery from parents for damage or destruction of school property; parent allowed to accompany child to school as alternative to child's suspension.
37-11-54. State Board of Education to develop list of conflict resolution and peer mediation materials, models, and curricula from evidence-based practices and positive behavioral intervention supports.
37-11-55. Code of student conduct.
37-11-57. Immunity of school personnel from liability for carrying out action in enforcing rules regarding control, discipline, suspension and expulsion of students; exception for students with disabilities.
37-11-59. Repealed.
37-11-61. Local school districts and agricultural high schools to provide parents information about meningococcal disease; State Board of Health to develop information about meningococcal disease for distribution to parents.
37-11-63. Local school boards, school superintendents and school principals not permitted to prohibit teachers from discussing and answering questions about the origin of life.
37-11-64. Prohibition against school administrators or other employees changing, altering or otherwise influencing grade received by student from teacher; exceptions; violation.
37-11-65. Students in grades 7-12 to be suspended from participation in extracurricular or athletic activity for failure to maintain certain cumulative grade point average.
37-11-66. Local school board adoption and implementation of written policy regarding school district's requirement for awarding a minimum grade.
37-11-67. Bullying or harassing behavior in public schools prohibited.
37-11-69. Anti-bullying personnel and discipline policies and code of student conduct.
37-11-71. Mississippi Asthma and Anaphylaxis Child Safety Act; legislative findings and declarations; self-administration of asthma and anaphylaxis medication; policy regarding administration of auto-injectable epinephrine by authorized school personnel; school district requirements relating to children with asthma.
37-11-73. Disbursement of certain funds by school districts to nonprofit foundations under certain circumstances.
37-11-75. Certain nonpublic schools to include in driver's education program instruction in how a person should properly respond when stopped by law enforcement officers.

## § 37-11-1. Assignment of pupil to class where presence of pupil would have adverse effect on class; request by parent or guardian to place twins or other multiples in same or separate classrooms.

(1) Subject to the provisions of subsection (2) of this section, after a pupil has been assigned to a particular public school in a school district, the principal, or anyone else vested with the authority of assigning pupils to

classes, knowingly shall not place such pupil in a class where the pupil's presence would serve to adversely affect, hinder, or retard the academic development of the other pupils in the class.

(2)(a) A parent or guardian of twins or higher order multiples, as defined in paragraph (d) of this subsection, may request that the children be placed in the same classroom or in separate classrooms if the children are in the same grade level at the same school in the school district. The school may recommend classroom placement and provide professional education advice to the parent or guardian to assist the parent or guardian in making the best decision for the children's education. A school must provide the placement requested by the children's parent or guardian unless: (i) the parent or guardian has requested that the children, who are different sexes, be placed in the same classroom and the students in the school have been assigned to different classrooms according to sex, as authorized under Section 37-11-3; or (ii) the school board of the school district makes a classroom placement determination following the school principal's request according to this subsection.

(b) A parent or guardian making a request under this subsection must submit a written request for the classroom placement to the school principal no later than fourteen (14) calendar days after the first day of each school year or, if the children are enrolled in the school after the school year commences, no later than fourteen (14) calendar days after the children's first day of attendance in the school.

(c) At the end of the initial grading period during which children have been in the same classroom or separate classrooms pursuant to their parent or guardian's request under this subsection, if the principal, in consultation with the children's classroom teacher or teachers, determines that the requested classroom placement is disruptive to the school, the principal may request that the school board determine the children's classroom placement.

(d) For purposes of this section, the term "higher order multiples" means triplets, quadruplets, quintuplets or more.

**HISTORY: Codes, 1942, § 6216-41; Laws, 1964, 1st Ex Sess, ch. 24; Laws, 2009, ch. 484, § 1; reenacted without change, Laws, 2011, ch. 348, § 1; Laws, 2013, ch. 497, § 54, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 2011, ch. 348, § 2, effective July 1, 2011, amended Laws of 2009, ch. 484, § 2, to delete the repealer for this section, which would have repealed the section effective July 1, 2011.

## RESEARCH REFERENCES

**ALR.**

Construction of "stay-put" provision of Education of the Handicapped Act (20 USCS § 1415(e)(3)), that handicapped child shall remain in current educational placement pending proceedings conducted under section. 103 A.L.R. Fed. 120.

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

**Practice References.**

Education Law (Matthew Bender).

## § 37-11-3. Separation of students according to sex.

In addition to all other power and authority which may now be vested in any board of trustees of any school district by the Constitution or statutes, or both, of the State of Mississippi, any such board of trustees is hereby vested with the authority to provide by assignment or reassignment, or other appropriate means, for the separation of students according to sex, separately by classrooms or schools, when such board, in its discretion, determines such separation will promote or preserve the public peace, order or tranquility of the school district, or the health, morals or education of the students.

**HISTORY: Codes, 1942, § 6220.7; Laws, 1964, 1st Ex Sess, ch. 25, eff from and after passage (approved July 15, 1964).**

### RESEARCH REFERENCES

**ALR.**

Application of Title IX of the Education Amendments of 1972 (20 USCS §§ 1681 et seq.) to sex discrimination in educational employment. 54 A.L.R. Fed. 522.

## § 37-11-5. Instruction in fire drills, emergency management, and active shooter drills.

(1) It shall be the duty of the principals and teachers in all public school buildings to instruct the pupils in the methods of fire drills and to practice fire drills until all the pupils in the school are familiar with the methods of escape. Such fire drills shall be conducted often enough to keep such pupils well drilled. It shall be the further duty of such principals and teachers to instruct the pupils in all programs of emergency management as may be designated by the State Department of Education.

(2) It shall be the further duty of such principals and teachers to develop and conduct an active shooter drill within the first sixty (60) days of each new school semester for students, teachers and staff.

**HISTORY: Codes, 1942, § 6216-10; Laws, 1953, Ex Sess, ch. 26, § 10; Laws, 1980, ch. 491, § 24, eff from and after passage (approved May 9, 1980); Laws, 2019, ch. 427, § 2, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by adding a subsection (1) designator to the first paragraph. Section 2 of Chapter 427, Laws of 2019, amended the section by adding a subsection (2) but did not add a (1) designator. The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Editor's Note —** Laws of 2019, ch. 427, § 1, provides:

"SECTION 1. This act shall be entitled and may be cited as the 'Mississippi School Safety Act of 2019.' "

**Amendment Notes —** The 2019 amendment added (2).

**Cross References —** Emergency management generally, see § 33-15-1 et seq.

## § 37-11-6. Purchase and installation in each school of weather radio.

In order to provide public schools with immediate access to inclement weather warnings, the State Board of Education shall require each public school district to provide for the purchase and installation, before July 1, 1997, of a weather radio for each school in the district.

**HISTORY: Laws, 1996, ch. 324, § 1, eff from and after July 1, 1996.**

## § 37-11-7. Acceptance of National School Lunch Act and Child Nutrition Act.

(1) The State of Mississippi does hereby accept and avail itself of all the provisions and benefits of acts passed by the Senate and House of Representatives of the United States of America in Congress assembled on June 4, 1946, known as the "National School Lunch Act," Chapter 281, 60 Stat 230, and on October 11, 1966, known as the "Child Nutrition Act," 80 Stat 885.

(2) The State Department of Education is hereby designated and appointed as the state agency in Mississippi to carry out and execute the functions and duties required of a state agency under the terms and provisions of said acts and to administer the funds made available by the federal government for the school lunch and other child nutrition programs for and in the State of Mississippi under the provisions of said acts. For such purpose, the State Superintendent of Public Education is hereby authorized and empowered to do any and all things which may be required under the terms of said acts to enable the State of Mississippi to receive the benefits thereof, to enter into any and all agreements and contracts with any officer or agency of the United States of America, or any other person, agency or political subdivision, that may be necessary, expedient or advisable in administering said acts, and to appoint and employ a state supervisor of the child nutrition programs and such other administrative, supervisory, stenographic and clerical personnel as may be necessary in the administration of said acts.

(3) The school boards of any combination of school districts may authorize by resolution the organization and operation of, or the participation in, a group purchase program with other participating child nutrition operators for the purchase of commodities, supplies, equipment and services provided under the school lunch and child nutrition programs, when it appears to said participating child nutrition operators that a group purchase program shall effect economy or efficiency in such operation. The State Department of Education may administer such group purchase program to provide commodities, supplies, equipment and services under the school lunch and child nutrition

programs and may charge and collect reasonable fees from participating operators for the actual cost of administering such group purchase program. Purchases by participating operators in such group purchasing programs shall not be exempt from public bid requirements as prescribed in Sections 31-7-12 and 31-7-13, Mississippi Code of 1972.

(4) The State Treasurer is hereby designated and appointed custodian of all monies received by the state from appropriations made to carry out the provisions of said acts of Congress, and he is authorized to receive and to provide for the proper custody of same, and to make disbursements thereof in the manner provided for in said acts and for the purposes therein specified.

**HISTORY: Codes, 1942, § 6228.5; Laws, 1947, 1st Ex Sess, ch. 13, §§ 1-3; Laws, 1992, ch. 524, § 6; Laws, 1993, ch. 602, § 2, eff from and after July 1, 1993.**

**Cross References —** Duties of state treasurer generally, see § 7-9-9.
State Department of Education generally, see § 37-3-1 et seq.
State Superintendent of public education, see § 37-3-9, 37-3-11.
**Federal Aspects—** National School Lunch Act, see 42 USCS §§ 1751 et seq. Child Nutrition Act of 1966, see 42 USCS §§ 1771 et seq.

## § 37-11-8. Office of Healthy Schools of the State Department of Education to develop and implement the Healthier School Initiative; purpose; financial incentives to certain schools; eligibility criteria to participate in HealthierUS School Challenge.

(1) The Office of Healthy Schools of the State Department of Education shall develop and implement the Healthier School Initiative, consistent with the HealthierUS School Challenge developed by the United States Department of Agriculture and administered through its Food and Nutrition Service, to facilitate healthy choices and practices by local school districts through the promotion of healthier school environments. The office shall establish standard procedures to be adhered to by schools electing to participate in the program and shall establish a deadline for the submission of applications for participation in the initiative.

(2) Subject to the availability of funds whether appropriated by the Legislature, in an amount not to exceed Two Hundred Thousand Dollars ($200,000.00), or received as gifts, bequests, endowments or grants from any public or private source, the Office of Healthy Schools shall provide financial incentives to schools receiving recognition through the HealthierUS School Challenge for purposes of funding the resources and staff training needed to meet healthy eating, nutrition education and physical education guidelines. The department shall allocate the funds to schools receiving recognition in the following amounts:

(a) Two Thousand Dollars ($2,000.00) shall be awarded to schools receiving the Bronze Award level of recognition;

(b) Four Thousand Dollars ($4,000.00) shall be awarded to schools receiving Silver Award level of recognition;

(c) Six Thousand Dollars ($6,000.00) shall be awarded to schools receiving Gold Award level of recognition; and

(d) Eight Thousand Dollars ($8,000.00) shall be awarded to schools receiving Gold Award of Distinction level of recognition.

(3) The Office of Healthy Schools shall require local school districts to include information relevant to the HealthierUS School Challenge on their district Web sites and shall provide technical assistance to schools that elect to participate in the challenge to become a HealthierUS School. The office shall require participating schools to:

(a) Enroll as a Team Nutrition School;

(b) Offer reimbursable lunches that demonstrate healthy menu planning practices and principles of the Dietary Guidelines for Americans and that meet United States Department of Agriculture nutrition standards;

(c) Provide nutrition education to students;

(d) Provide students with physical education and the opportunity for physical activity;

(e) Maintain an average daily participation of school enrollment for reimbursable lunches; and

(f) Adhere to guidelines established by Food and Nutrition Service for foods served and/or sold in schools outside the National School Lunch Program.

(4) To be eligible for participation, a school must:

(a) Be a public elementary or secondary school;

(b) Participate in the National School Lunch Program;

(c) Be enrolled in United States Department of Agriculture Team Nutrition; and

(d) Submit an application to the United States Department of Agriculture.

(5) Application for certification as a HealthierUS School must be submitted to the State Department of Education for review by the Office of Healthy Schools, which, upon its approval, shall forward the applications to the United States Department of Agriculture for consideration. Any application that is not approved based on standards for submission established by the Office of Healthy Schools shall be returned with instructions for modification and resubmission by the submitting school.

**HISTORY: Laws, 2010, ch. 425, § 1, eff from and after July 1, 2010.**

**Editor's Notes —** The preamble to Laws of 2010, ch. 425, provides as follows:

"WHEREAS, the United States Department of Agriculture's Food and Nutrition Service (FNS) recognizes schools that take a leadership role in helping students learn to make healthy eating and active lifestyle choices through the HealthierUS School Challenge (HUSSC); and

"WHEREAS, the HealthierUS School Challenge (HUSSC) was established to recognize schools that are creating healthier school environments through their promotion of good nutrition and physical activity on four (4) levels of superior performance: Bronze, Silver, Gold, and Gold Award of Distinction; and

"WHEREAS, to qualify for the awards, a school must submit a formal application and meet basic criteria set forth by the Food and Nutrition Service reflecting the HUSSC criteria recommended in the 2005 Dietary Guidelines for Americans and the Institute of Medicine's (IOM) recommendations published in April 2007 for foods that should be served in schools, outside of the organized school lunch meals; and

"WHEREAS, HealthierUS Schools also must have a local school wellness policy as mandated by the United States Congress which supports the HUSSC initiative and affirms that the school plays a critical role in promoting student health, preventing childhood obesity, and combating problems associated with poor nutrition and physical inactivity; NOW, THEREFORE,"

## § 37-11-9. Payment by school board of medical expenses for injuries sustained in athletic activities; purchase of hospitalization insurance.

The board of trustees of any school district is authorized and empowered to pay out of the athletic fund or funds obtained from athletic activities all of the actual medical expenses evidenced by itemized bills of account, for injuries sustained by any regularly enrolled student while participating in athletic activities considered a part of any sport that said school engages in as a part of any regularly scheduled athletic contest with other schools, to include any injury sustained in any contest scheduled by the proper school authorities and any required training preparatory thereto.

In lieu of the payment set out in the first paragraph above, and in the discretion of the board of trustees, the board is authorized and empowered to contract for hospitalization insurance designed to fully compensate students for actual medical expenses in such cases. The payment of such hospitalization insurance shall be made from funds available as set out in the first paragraph above.

**HISTORY: Codes, 1942, § 6228.1; Laws, 1950, ch. 229, §§ 1, 2.**

### OPINIONS OF THE ATTORNEY GENERAL

A school board has the authority to purchase medical and hospitalization insurance for those students engaged in athletic training and competitions; therefore, to the extent that an accident medical insurance policy comports with this section, a school district may purchase same. Harlow, March 12, 1999, A.G. Op. #99-0086.

### RESEARCH REFERENCES

**ALR.**

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 A.L.R.4th 344.

**Am. Jur.**

33 Am. Jur. Trials 401, Gymnasium and Health Spa Injuries.

15 Am. Jur. Proof of Facts 2d 1, Sports Injury – Negligence.

## § 37-11-11. Furnishing of instruction and training for hospitalized children.

(1) For the purposes of this section, the term "hospital" shall include community-based programs and facilities licensed or approved by the Department of Mental Health for treatment of chemical substance use and abuse.

(2) When five (5) or more children of educable mind between the ages of six (6) and twenty-one (21) years who are capable of pursuing courses of instruction at secondary school level or below shall be confined in a hospital for an extended period of time, such children shall be eligible for and shall be provided with a program of education, instruction and training within such hospital in the manner hereinafter set forth, provided that the need for hospitalization for an extended period of time shall be certified by the chief of staff of such hospital and that the ability of such children to do school work shall be certified by qualified psychologists and/or educators approved by the State Board of Education.

(3) When five (5) or more children as set forth herein shall be confined in the same hospital, then the board of trustees of the school district in which such hospital is located shall be authorized and empowered, in its discretion, to provide a program of education, instruction and training to such children within such hospital. For such purpose the board shall be authorized and empowered to employ and contract with teachers, provide textbooks and other instructional materials, correspondence courses and instructional equipment and appliances, and otherwise provide for the furnishing of such program and to administer and supervise the same. Such program shall be furnished in a manner as prescribed by rules and regulations adopted by the State Board of Education. The state board shall have full power to adopt such rules, regulations, policies and standards as it may deem necessary to carry out the purpose of this section, including the establishment of qualifications of any teachers employed under the provisions hereof. It is expressly provided, however, that no program shall be furnished under this section except in a hospital licensed for operation by the State of Mississippi and only in cases where such hospital shall consent thereto, shall provide any classroom space, furniture and facilities which may be deemed necessary, and otherwise shall cooperate in carrying out the provisions of this section. Before such program of education, instruction and training shall be provided, the governing authorities of said hospital shall enter into a contract with the board of trustees of the school district which stipulates that said hospital agrees to furnish the necessary classroom space, furniture and facilities and provide for their upkeep, fuel and such other things as may be necessary for the successful operation of the program of education, instruction and training.

(4) In cases when children who are residents of school districts other than the school district providing such education program may participate in the program prescribed in this section. The boards of trustees of the districts of which such children are residents shall pay to the board of trustees of the school district furnishing such school program the pro rata part of the expenses

of furnishing such school program within such hospital, which payments may be made from any funds available for the operation and maintenance of the schools of the district in which such child is a resident. The amount so paid shall be based upon, but shall not exceed, the current per pupil cost of education in the school district of the child's residence, and the amount to be so paid by the school district of the child's residence shall be fixed by the State Board of Education. If the amount to be paid which has been so fixed shall not be paid upon due demand made by the school district providing a program therefor, then the State Board of Education shall deduct any such amounts from the next allocation of minimum education program school funds attributable to any such district and shall remit the same to the board of trustees of such school district which is furnishing such school program. If the amounts so paid by such school districts of the child's residence shall not be sufficient to pay the expenses of furnishing such program, then the remainder of such expenses over and above that so paid by such school districts shall be paid by the State Board of Education to the school district providing such school program out of any funds available to the State Board of Education, including minimum education program school funds. However, such payments shall not exceed Three Hundred Dollars ($300.00) per child in average daily attendance in such program. Provided, however, the State Board of Education shall in its discretion be authorized and empowered to exceed the said Three Hundred Dollars ($300.00) per pupil limitation where such limitation would make it impractical to operate such a program.

**HISTORY: Codes, 1942, § 6228.3; Laws, 1950, ch. 367, §§ 1-3; Laws, 1962, 2d Ex Sess, ch. 21; Laws, 1989, ch. 428, § 1, eff from and after July 1, 1989.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.
State Department of Mental Health generally, see §§ 41-4-1 et seq.

## § 37-11-13. Employment of education personnel suffering from tuberculosis.

No person suffering from tuberculosis in an infectious or communicable stage will be employed in any school in this state, public or private, as an administrator, teacher, secretary, janitor, cook in lunchroom, bus driver, or in any other capacity.

**HISTORY: Codes, 1942, § 6232-61; Laws, 1966, ch. 432, § 1, eff from and after July 1, 1966.**

**Cross References —** Tuberculosis and respiratory diseases, see § 41-33-1 et seq.

## § 37-11-15. Repealed.

Repealed by Laws 1981, ch. 372, § 1, eff from and after July 1, 1981. [Codes, 1942, § 6232-62; Laws, 1966, ch. 432, § 2]

**Editor's Notes —** Former § 37-11-15 provided for the examination and certification of applicants for employment as free from tuberculosis.

## § 37-11-17. Physical examinations of employees for infectious or communicable diseases; spinal curvature screening program for students.

(1) The State Board of Education, the Board of Trustees of State Institutions of Higher Learning, the Mississippi Community College Board, the boards of trustees of the several junior colleges, the county boards of education, the governing authorities of any county, municipal or other public school districts, such other boards set up by law for any educational institution, school, college or university, or their authorized representative, or the State Health Officer or his authorized representative, may require any teacher, supervisor, janitor or other employee of the school to submit to a thorough physical examination, deemed advisable to determine whether he has any infectious or communicable disease.

(2) The State Board of Education may develop a program to accomplish the identification of public school district students with abnormal spinal curvature. No state funds shall be expended for the purposes of implementing this subsection. Such program shall:

(a) Provide that an adequate number of school personnel in each district be instructed by qualified medical experts in the proper examination of students for abnormal spinal curvatures;

(b) Provide that all public school district students who are at least ten (10) years old be screened at least every two (2) years but at least in the fourth, sixth, eighth and tenth grades or at such other times as may be recommended by medical experts on a per case basis;

(c) Provide that students identified as having abnormal spinal curvatures or potential for abnormal spinal curvatures be referred to the county health officer or to the student's personal physician or chiropractor with notice of the evaluation; and

(d) Provide for notification of the parent or guardian of any student identified under this program and for the supplying to such parent or guardian information on the condition and resources available for the correction or treatment of such condition. However, the requirement for screening shall not apply to a child whose parent or guardian objects thereto on grounds that the requirement conflicts with his conscientiously held religious beliefs.

**HISTORY: Codes, 1942, § 6232-63; Laws, 1966, ch. 432, § 3; Laws, 1981, ch. 372, § 2; Laws, 1986, ch. 434, § 5; Laws, 1987, ch. 419; Laws, 2013, ch. 497, § 55, eff from and after July 1, 2013.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Mississippi Community College Board generally, see § 37-4-1 et seq.

Board of Trustees of State Institutions of Higher Learning generally, see § 37-101-1 et seq.

Executive officer of State Board of Health to be State Health Officer, see § 41-3-5.1.

## § 37-11-18. Expulsion of student possessing controlled substance or weapon or committing violent act on school property.

Any student in any school who possesses any controlled substance in violation of the Uniform Controlled Substances Law, a knife, handgun, other firearm or any other instrument considered to be dangerous and capable of causing bodily harm or who commits a violent act on educational property as defined in Section 97-37-17, Mississippi Code of 1972, shall be subject to automatic expulsion for a calendar year by the superintendent or principal of the school in which the student is enrolled; provided, however, that the superintendent of the school shall be authorized to modify the period of time for such expulsion on a case by case basis. Such expulsion shall take effect immediately subject to the constitutional rights of due process, which shall include the student's right to appeal to the local school board.

**HISTORY: Laws, 1994, ch. 595, § 9; Laws, 1995, ch. 423, § 1; Laws, 1996, ch. 534, § 2, eff from and after July 1, 1996.**

**Cross References —** Expulsion of certain habitually disruptive students, see § 37-11-18.1.

Suspension or expulsion of student damaging school property, see § 37-11-19.

Code of student conduct, see § 37-11-55.

Admission or enrollment in public school of any child who has been expelled or is a party to an expulsion proceeding for an act involving violence, weapons, alcohol or illegal drugs, see § 37-15-9.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

Uniform Controlled Substances Law, see § 41-29-101 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Where a student was in possession of a handgun for approximately 20 seconds at school, he was subject to automatic expulsion for a calendar year; however, the superintendent has express authority to exercise his or her discretion is modifying the period of time for expulsion based on the circumstances of the case. Westbrook, June 13, 2003, A.G. Op. 03-0273.

### RESEARCH REFERENCES

**ALR.**

School's Violation of Student's Substantive Due Process Rights by Suspending or Expelling Student. 90 A.L.R.6th 235.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 344, 345, 353 et seq.

79 Am. Jur. 2d, Weapons and Firearms § 32.

### § 37-11-18.1. Expulsion of habitually disruptive students aged 13 years or older upon third occurrence of disruptive behavior within school year.

(1) For the purposes of this section:

(a) The term "disruptive behavior" means conduct of a student that is so unruly, disruptive or abusive that it seriously interferes with a school teacher's or school administrator's ability to communicate with the students in a classroom, with a student's ability to learn, or with the operation of a school or school-related activity, and which is not covered by other laws related to violence or possession of weapons or controlled substances on school property, school vehicles or at school-related activities. Such behaviors include, but are not limited to: foul, profane, obscene, threatening, defiant or abusive language or action toward teachers or other school employees; defiance, ridicule or verbal attack of a teacher; and willful, deliberate and overt acts of disobedience of the directions of a teacher; and

(b) The term "habitually disruptive" refers to such actions of a student which cause disruption in a classroom, on school property or vehicles or at a school-related activity on more than two (2) occasions during a school year, and to disruptive behavior that was initiated, willful and overt on the part of the student and which required the attention of school personnel to deal with the disruption. However, no student shall be considered to be habitually disruptive before the development of a behavior modification plan for the student in accordance with the code of student conduct and discipline plans of the school district.

(2) Every behavior modification plan written pursuant to this section must be developed by utilizing evidence-based practices and positive behavioral intervention supports. The plan must be implemented no later than two (2) weeks after the occurrence of the disruptive behavior.

(3) Any student who is thirteen (13) years of age or older for whom a behavior modification plan is developed by the school principal, reporting teacher and student's parent and which student does not comply with the plan shall be deemed habitually disruptive and subject to expulsion on the occurrence of the third act of disruptive behavior during a school year. After the second act of disruptive behavior during a school year by a student, a psychological evaluation shall be performed upon the child.

**HISTORY: Laws, 2001, ch. 486, § 6; Laws, 2003, ch. 416, § 4; Laws, 2007, ch. 416, § 4; Laws, 2010, ch. 488, § 7, eff from and after July 1, 2010.**

**Editor's Notes** — Laws of 2001, ch. 486, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.' "

**Cross References** — Automatic expulsion of student possessing controlled substance or weapon or committing violent act on school property, see § 37-11-18.

Suspension or expulsion of student damaging school property, see § 37-11-19.

Code of student conduct, see § 37-11-55.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## RESEARCH REFERENCES

**ALR.**

School's Violation of Student's Substantive Due Process Rights by Suspending or Expelling Student. 90 A.L.R.6th 235.

## § 37-11-19. Suspension or expulsion of student damaging school property; liability of parent or custodian.

If any pupil shall wilfully destroy, cut, deface, damage, or injure any school building, equipment or other school property he shall be liable to suspension or expulsion and his parents or person or persons in loco parentis shall be liable for all damages.

**HISTORY: Codes, 1942, § 6216-04; Laws, 1953, Ex Sess, ch. 26, § 4, eff from and after July 1, 1954.**

**Cross References —** Automatic expulsion of student possessing controlled substance or weapon or committing violent act on school property, see § 37-11-18.

Expulsion of certain habitually disruptive students, see § 37-11-18.1.

Recovery of damages from parent for child's destructive acts against school property, see § 37-11-53.

Code of student conduct, see § 37-11-55.

## JUDICIAL DECISIONS

**1. In general.**

School board may suspend student caught defacing school building, in accordance with mandatory school district regulation, notwithstanding fact that other punishment might be more appropriate. Clinton Municipal Separate School Dist. v. Byrd, 477 So. 2d 237, 1985 Miss. LEXIS 2204 (Miss. 1985).

## OPINIONS OF THE ATTORNEY GENERAL

A school board may, with proper notice, adopt a rule wherein further property belonging to the school may be withheld from a student who has lost, destroyed, or damaged school property entrusted to him or her until such time as the student or parents reimburse the school for the property. Chaney, Jr., Jan. 28, 2000, A.G. Op. #99-0723.

While a school has the authority to impose disciplinary punishment against a student who damages school property (or to seek reimbursement from the student's parents), a school should not act in a manner that imposes an academic punishment on the student. Adams, Jan. 23, 2004, A.G. Op. 03-0553.

## RESEARCH REFERENCES

**ALR.**

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 A.L.R.5th 1.

School's Violation of Student's Substantive Due Process Rights by Suspending or Expelling Student. 90 A.L.R.6th 235.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 344, 345, 353 et seq.

**CJS.**
78A C.J.S., Schools and School Districts § 1091 et seq.

**Law Reviews.**
1985 Mississippi Supreme Court Review – Administrative Law. 55 Miss. L. J. 735, December 1985.

## § 37-11-20. Intimidation, threatening or coercion of students for purpose of interfering with attendance of classes.

It shall be unlawful for any person to intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, whether by illegal force, threats of force or by the distribution of intimidating, threatening or coercive material, any person enrolled in any school for the purpose of interfering with the right of that person to attend school classes or of causing him not to attend such classes.

Upon conviction of violation of any provision of this section, such individual shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed Five Hundred Dollars ($500.00), imprisonment in jail for a period not to exceed six (6) months, or both. Any person under the age of seventeen (17) years who violates any provision of this section shall be treated as a delinquent within the jurisdiction of the youth court.

**HISTORY: Codes, 1942, § 6216-05.5; Laws, 1972, ch. 383, §§ 1, 2, eff from and after passage (approved April 26, 1972).**

**Cross References** — Applicability of the provisions of this section to charter schools, see § 37-28-45.

Youth Court Law, see § 43-21-101 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-11-21. Abuse of superintendent, principal, teacher, or bus driver.

If any parent, guardian or other person, shall abuse any superintendent, principal, teacher or school bus driver while school is in session or at a school-related activity, in the presence of school pupils, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00).

**HISTORY: Codes, 1942, § 6216-05; Laws, 1953, Ex Sess, ch. 26, § 5; Laws, 1970, ch. 351, § 1; Laws, 1992, ch. 431, § 1, eff from and after July 1, 1992.**

**Cross References** — Applicability of the provisions of this section to charter schools, see § 37-28-45.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-11-23. Disturbing public school sessions or meetings.

If any person shall wilfully disturb any session of the public school or any public school meeting, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00).

**HISTORY: Codes, 1942, § 6216-05; Laws, 1953, Ex Sess, ch. 26, § 5; Laws, 1970, ch. 351, § 1, eff from and after passage (approved April 1, 1970).**

**Cross References** — Applicability of the provisions of this section to charter schools, see § 37-28-45.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-11-25. Interest in proceeds or profits of sale or rental of property used in public schools.

If any public school official of this state or of any county or municipality or school district thereof, or any superintendent, principal, or teacher in the public schools, or any trustee of a school district shall be interested, either directly or indirectly, in the proceeds or profits of the sale or rental of any book, furniture, equipment or other property to be used in any public schools of this state such person shall be guilty of a misdemeanor and, upon conviction, he shall be fined not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00). However, nothing in this section shall be construed to apply to the receipt of royalties on books or other publications used in the public schools.

**HISTORY: Codes, 1942, § 6216-06; Laws, 1953, Ex Sess, ch. 26, § 6; brought forward without change, Laws, 2013, ch. 497, § 56, eff from and after July 1, 2013.**

**Cross References** — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-11-27. Interest in contracts involving public schools.

It shall be unlawful for any member of the board of trustees of any school district, any member of the county board of education, the county superintendent of education or any superintendent, principal, teacher, or employee of a county board of education or any school district to have or own any direct or indirect interest individually or as agent or employee of any person, partnership, firm, or corporation in any contract made or let by the county board of education, the county superintendent of education or the board of trustees of the school district for the construction, repair, or improvement of any school facility, the furnishing of any supplies, materials, or other articles, the doing of any public work or the transportation of children or upon any subcontract arising therefrom or connected therewith in any manner. The board of trustees of any school district shall be authorized to contract with a teacher or school district employee to perform extra work without being in violation of the provisions of this section. The board of trustees shall make a case by case determination of the possible conflicts of interest arising from any extra work contracts and such decision by the board shall be final. Any contract entered into in violation of the provisions of this section shall be void and of no effect. Any person who shall authorize or enter into any contract in violation of the provisions hereof, or who shall knowingly or wilfully pay out or receive any money upon any such contract shall be civilly liable for the amount so paid or received, and, in the case of an official who has furnished a bond, the surety upon such bond shall likewise be liable for such amount. In addition thereto, any person who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment, in the discretion of the court.

**HISTORY: Codes, 1942, § 6328-29; Laws, 1953, Ex Sess, ch. 17, § 9; Laws, 1989, ch. 585, § 5, effective April 25, 1989 (became law without the Governor's signature).**

**Editor's Notes —** Laws of 1989, ch. 585, § 9, provides as follows:

"SECTION 9. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

**Cross References —** Prohibition against nepotism generally, see §§ 25-1-53, 25-1-55.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Persons liable.
3. Defenses.
4. Particular violations.

**1. In general.**

County school superintendent is subject to conflict of interest statute and is also public official within meaning and contemplation of penalty statute. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

**2. Persons liable.**

All Board members and Superintendent, and their respective sureties, were liable for amount of school funds paid to contractor which employed one of Board members because contract was infected with conflict of interest, although that member had abstained from voting on any matter dealing with contract, on advice of Board's attorney. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

School Superintendent was liable, as well as county School Board members, for violating conflict of interest statute, although Superintendent was prohibited by statute from participating in decisions such as one underlying alleged conflict of interest in this case, because § 37-11-27 names Superintendent as being among persons prohibited from making, authorizing, or entering any such contract; additionally, record reflected, without contradiction, that Superintendent did in fact execute contract and recommend payment of moneys under it. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

**3. Defenses.**

Acting on advice of counsel is not sufficient to vitiate imposition of penalty under § 19-13-37 [repealed] where § 37-11-27 proscription of conflict of interest is violated, despite alleged good faith defense of Board members, who were advised by Board's attorney that no violation of conflict of interest statute would occur so long as member who was employed by contractor refrained from participating in any action regarding that contract. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

**4. Particular violations.**

School Board contracting with firm which employed one of members of School Board constituted "substantial departure" from directives of conflict of interest statute, § 37-11-27, which prescribes manner and method of making school repair contracts; fact that Board member's compensation from his employer was not dependent upon his employer receiving contract was of no moment, because statute declares relationship unlawful. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

### OPINIONS OF THE ATTORNEY GENERAL

If a secretary or part-time teacher has absolutely nothing to do with, and takes no part in, the awarding of a contract for the performance of odd jobs or the purchasing of batteries from her spouse, it would not be illegal for a school district to contract with this party or to continue buying batteries from this party. Chaney, Jr., Mar. 9, 2001, A.G. Op. #01-0094.

A conflict of interest would exist where a member of the county school board was employed by a company that held a contract with the board. Carmichael, Jan. 10, 2003, A.G. Op. #02-0745.

A contract for services only is not of the type prohibited by this section. It makes no difference whether the employee/board member in question is an employee of the current provider or the employee of a provider which may be utilized in the future. This section contains no language directing the recusal of a member from voting on contracts which are not under the general prohibition of that section. Blessey, Apr. 2, 2004, A.G. Op. 04-0134.

Permitting school district employees to place FEMA trailers on school district property that is not being used for school purposes, is not a contract that is prohibited by the provisions of Section 37-11-27. Sessoms, Dec. 9, 2005, A.G. Op. 05-0559.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 31 et seq.

**Law Reviews.**

1987 Mississippi Supreme Court Review, Professional responsibility. 57 Miss. L. J. 433, August, 1987.

## § 37-11-29. Reporting of unlawful activity or violent act on educational property or during school related activity; authority of law enforcement officers; reporting of disposition of charges against student; liability of school personnel participating in reporting.

(1) Any principal, teacher or other school employee who has knowledge of any unlawful activity which occurred on educational property or during a school related activity or which may have occurred shall report such activity to

the superintendent of the school district or his designee who shall notify the appropriate law enforcement officials as required by this section. In the event of an emergency or if the superintendent or his designee is unavailable, any principal may make a report required under this subsection.

(2) Whenever any person who shall be an enrolled student in any school or educational institution in this state supported in whole or in part by public funds, or who shall be an enrolled student in any private school or educational institution, is arrested for, and lawfully charged with, the commission of any crime and convicted upon the charge for which he was arrested, or convicted of any crime charged against him after his arrest and before trial, the office or law enforcement department of which the arresting officer is a member, and the justice court judge and any circuit judge or court before whom such student is tried upon said charge or charges, shall make or cause to be made a report thereof to the superintendent or the president or chancellor, as the case may be, of the school district or other educational institution in which such student is enrolled.

If the charge upon which such student was arrested, or any other charges preferred against him are dismissed or nol prossed, or if upon trial he is either convicted or acquitted of such charge or charges, same shall be reported to said respective superintendent or president, or chancellor, as the case may be. A copy of said report shall be sent to the Secretary of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, at Jackson, Mississippi.

Said report shall be made within one (1) week after the arrest of such student and within one (1) week after any charge placed against him is dismissed or nol prossed, and within one (1) week after he shall have pled guilty, been convicted, or have been acquitted by trial upon any charge placed against him. This section shall not apply to ordinary traffic violations involving a penalty of less than Fifty Dollars ($50.00) and costs.

The State Superintendent of Public Education shall gather annually all of the reports provided under this section and prepare a report on the number of students arrested as a result of any unlawful activity which occurred on educational property or during a school related activity. All data must be disaggregated by race, ethnicity, gender, school, offense and law enforcement agency involved. However, the report prepared by the State Superintendent of Public Education shall not include the identity of any student who was arrested.

On or before January 1 of each year, the State Superintendent of Public Education shall report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives and the Joint PEER Committee on this section. The report must include data regarding arrests as a result of any unlawful activity which occurred on educational property or during a school related activity.

(3) When the superintendent or his designee has a reasonable belief that an act has occurred on educational property or during a school related activity involving any of the offenses set forth in subsection (6) of this section, the

superintendent or his designee shall immediately report the act to the appropriate local law enforcement agency. For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area or athletic field in the charge of the superintendent. The State Board of Education shall prescribe a form for making reports required under this subsection. Any superintendent or his designee who fails to make a report required by this section shall be subject to the penalties provided in Section 37-11-35.

(4) The law enforcement authority shall immediately dispatch an officer to the educational institution and with probable cause the officer is authorized to make an arrest if necessary as provided in Section 99-3-7.

(5) Any superintendent, principal, teacher or other school personnel participating in the making of a required report pursuant to this section or participating in any judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person reporting in good faith shall be immune from any civil liability that might otherwise be incurred or imposed.

(6) For purposes of this section, "unlawful activity" means any of the following:

(a) Possession or use of a deadly weapon, as defined in Section 97-37-1;

(b) Possession, sale or use of any controlled substance;

(c) Aggravated assault, as defined in Section 97-3-7;

(d) Simple assault, as defined in Section 97-3-7, upon any school employee;

(e) Rape, as defined under Mississippi law;

(f) Sexual battery, as defined under Mississippi law;

(g) Murder, as defined under Mississippi law;

(h) Kidnapping, as defined under Mississippi law; or

(i) Fondling, touching, handling, etc., a child for lustful purposes, as defined in Section 97-5-23.

**HISTORY: Codes, 1942, § 6216-31; Laws, 1960, ch. 319, § 1; Laws, 1994, ch. 636, § 2; Laws, 1994, ch. 607, § 2; Laws, 1996, ch. 311, § 1; Laws, 2016, ch. 388, § 1, eff from and after July 1, 2016.**

**Joint Legislative Committee Note** — Subsection (3) of this section contained an incorrect reference to "Section 37-11-15." In 2007, the reference was changed to "Section 37-11-35" at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The correction was ratified by the Joint Committee, pursuant to Section 1-1-109, at the Committee's August 5, 2008, meeting.

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

Contents of report as required pursuant to the provisions of this section, see § 37-11-31.

Fees for reports, pursuant to this section, see § 37-11-33.

Penalties for failure to file reports pursuant to this section, see § 37-11-35.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

Board of Trustees of State Institutions of Higher Learning generally, see § 37-101-1 et seq.

## JUDICIAL DECISIONS

**1. Failure to report.**

There was substantial evidence supporting the termination of a principal after he failed to report three incidents as required by Miss. Code Ann. § 37-11-29(1) and the a county board of education's policy including that the principal first claimed that he was not aware of the incidents and later testified that he had tried to call the superintendent to make a report. Simpson v. Holmes County Bd. of Educ., 2 So. 3d 799, 2009 Miss. App. LEXIS 62 (Miss. Ct. App. 2009).

## OPINIONS OF THE ATTORNEY GENERAL

All crimes, not just the ones enumerated in this section, should be reported to the school system regardless of whether such crime was committed on or off school property. Anderton, Nov. 21, 1997, A.G. Op. #97-0739.

The statute cannot apply to students who are in the jurisdiction of the youth court since the youth court does not try or convict youths and, instead, adjudicates them as delinquents; the courts specifically mandated in the statute to provide information to the school officials are the justice court and the circuit court and there is no mention of the youth court. Beckett, May 22, 1998, A.G. Op. #98-0257.

There is no conflict between § 43-21-255 and this section; the former provides the procedure for information which may be released concerning students who are in the jurisdiction of the youth court, while the latter provides for the release of information concerning students who are in the jurisdiction of the adult court system. Beckett, May 22, 1998, A.G. Op. #98-0257.

A local school board has the authority to establish policies and procedures regarding Sections 37-9-14 and 37-11-29; however, these policies and procedures may not be in conflict with the requirements of these two statutes. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

It is not within the authority of administrators to refrain from reporting these crimes as required by Section 37-11-29, and only handle matters administratively. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

An arrest is not a prerequisite to making an immediate report to local law enforcement. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

The reporting of unlawful activity to a district employed law enforcement officer does not meet the reporting criteria for Sections 37-9-14 and 37-11-29. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

The requirement that the superintendent report any unlawful act which he reasonably believes occurred on educational property or during a school related activity remains regardless of whether reasonable belief is established from the superintendent's knowledge or from information relayed to the superintendent by a principal, teacher, other school employee or a concerned citizen. Preston, Apr. 11, 2003, A.G. Op. 03-0154.

When a superintendent has a reasonable belief that an unlawful act has occurred on educational property or during a school related activity, a report must be made to local law enforcement at once and without delay. Preston, Apr. 11, 2003, A.G. Op. 03-0154

## RESEARCH REFERENCES

**ALR.**

Right of action under Title IX of Education Amendments Act of 1972 (20 USCS §§ 1681 et seq.) against school or school district for sexual harassment of student by student's peer. 141 A.L.R. Fed. 407.

## § 37-11-31. Contents of report pursuant to § 37-11-29.

Such report as is required pursuant to the provisions of Section 37-11-29(2), shall contain the full name of the student; the place, date and time of arrest; a brief statement of the charge or charges upon which he was arrested, and any other charges placed against him after his arrest but before the making of the report, and the disposition, if any, which may have been made of said charges by the arresting officer or the law enforcement department of which he be a member; whether the student was released on bail and, if so, the amount thereof; and the person's home address and the school or educational institution in which he was enrolled. If the report be made after the trial of such person it shall contain all of the foregoing information and, in addition, a brief statement of the charge or charges upon which he was tried, whether acquitted or convicted; if convicted, the punishment inflicted; if any appeal has been taken from the decision of the justice court judge or circuit court such shall be so stated; and if such person be admitted to bail either before or after trial, the amount thereof shall be stated, together with the name of each surety upon his bail bond.

**HISTORY: Codes, 1942, § 6216-31; Laws, 1960, ch. 319, § 1; Laws, 1994, ch. 607, § 3, eff from and after July 2, 1994.**

**Cross References —** Reporting of unlawful activity or violent act on school property, reporting of disposition of charges against student, see § 37-11-29.

Fees for reports, pursuant to § 37-11-29, see § 37-11-33.

Penalties for failure to file reports pursuant to § 37-11-29, see § 37-11-35.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

### OPINIONS OF THE ATTORNEY GENERAL

Youth court judge may authorize release of information to schools concerning juvenile records of any student when judge finds that such disclosure is required for public safety and finds that health or safety of that student or other students in school may be affected if information is not made available to school officials. Bennett Nov. 3, 1993, A.G. Op. #93-0779.

## § 37-11-33. Fees for reports pursuant to § 37-11-29; disposition of reports.

The office or law enforcement department or agency or the justice court judge or the clerk of the circuit court making such reports as are required pursuant to the provisions of Section 37-11-29(2), shall receive the sum of One Dollar ($1.00) for each such report made, which sum shall be paid from the general fund by the town, city, or county where such report or reports are made, upon proper bill being submitted therefor supported by certificate or affidavit that such reports have been made.

All such reports shall be preserved by each recipient thereof and a copy retained in the office or law enforcement department or agency, state, county or municipal, and in the office of any justice of the peace or circuit clerk, as the case may be, who or which made such report or reports.

**HISTORY: Codes, 1942, § 6216-31; Laws, 1960, ch. 319, § 1; Laws, 1994, ch. 607, § 4, eff from and after July 2, 1994.**

**Cross References —** Reporting of unlawful activity or violent act on school property, reporting of disposition of charges against student, see § 37-11-29.
Contents of reports pursuant to § 37-11-29, see § 37-11-31.
Penalties for failure to file reports pursuant to § 37-11-29, see § 37-11-35.

## § 37-11-35. Penalties for failure to file reports pursuant to Section 37-11-29 or 97-5-24.

(1) If any person charged by Section 37-11-29(2) or (3) to make the reports therein provided for shall willfully fail, refuse or neglect to file any such report, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00) or be imprisoned not exceeding six (6) months, or both.

(2) If any person charged by Section 97-5-24 to make the reports therein provided for shall willfully fail, refuse or neglect to file any such report, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00) or be imprisoned not exceeding six (6) months, or both.

**HISTORY: Codes, 1942, § 6216-32; Laws, 1960, ch. 319, § 2; Laws, 1994, ch. 607, § 5; Laws, 2011, ch. 514, § 3, eff from and after passage (approved Apr. 26, 2011).**

**Editor's Notes —** Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."
**Cross References —** Reporting of unlawful activity or violent act on school property, reporting of disposition of charges against student, see § 37-11-29.
Contents of reports pursuant to § 37-11-29, see § 37-11-31.
Fees for reports pursuant to § 37-11-29, see § 37-11-33.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see 99-19-73.

## § 37-11-37. Public high school fraternity, sorority or secret society; definition.

A public high school fraternity, sorority or secret society, as contemplated by Sections 37-11-37 through 37-11-45, is hereby defined to be any organization composed wholly, or in part, of public high school pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such high school on the basis of the decision of the membership of such fraternity, sorority or secret society, rather than upon the free choice of any pupil in the school. However, this does not apply to the Order of DeMolay or a similar organization sponsored by any branch of the Masonic Orders or like adult fraternal organization.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Cross References** — Public high school fraternity, sorority or secret society-illegality; membership or participation in activities; duties of boards of trustees; solicitation of pupils, see §§ 37-11-39 through 37-11-45.

Similar provision defining junior college fraternity, sorority or secret society, see § 37-29-235.

### OPINIONS OF THE ATTORNEY GENERAL

Student elected homecoming courts are not violation of statutes governing organization of high school fraternities and sororities. Furtenberry Oct. 6, 1993, A.G. Op. #93-0720.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 314, 316, 317.

## § 37-11-39. Public high school fraternity, sorority or secret society; illegality.

Any public high school fraternity, sorority, or secret society organization as defined in Section 37-11-37 is hereby declared to be inimical to public free schools and therefore unlawful.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Cross References** — Public high school fraternity, sorority or secret society-definition; membership or participation in activities; duties of boards of trustees; solicitation of pupils, see §§ 37-11-37, 37-11-41 through 37-11-45.

Similar provision pertaining to junior college fraternities, sororities or secret societies, see § 37-29-237.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Student elected homecoming courts are not violation of statutes governing organization of high school fraternities and sororities. Furtenberry Oct. 6, 1993, A.G. Op. #93-0720.

### RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 285-287.

## § 37-11-41. Public high school fraternity, sorority or secret society; membership or participation in activities.

It shall be unlawful for any pupil attending the public schools of this state to become a member of or to belong to or participate in the activities of any high school fraternity, sorority, or secret society as defined in Section 37-11-37.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Cross References** — Public high school fraternity, sorority or secret society-definition; illegality; duties of boards of trustees; solicitation of pupils, see §§ 37-11-37, 37-11-39, 37-11-43, 37-11-45.

Similar provision pertaining to junior college fraternities, sororities or secret societies, see § 37-29-239.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

Student elected homecoming courts are not violation of statutes governing organization of high school fraternities and sororities. Furtenberry Oct. 6, 1993, A.G. Op. #93-0720.

## RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 314, 316, 317.

## § 37-11-43. Public high school fraternity, sorority or secret society; duties of boards of trustees.

All boards of trustees of public high schools shall prohibit fraternities, sororities, or secret societies in all high schools under their respective jurisdiction. It shall be the duty of said boards of trustees to suspend or expel from said high schools under their control, any pupil or pupils who shall be or remain a member of, or shall join or promise to join, or who shall become pledged to become a member, or who shall solicit or encourage any other person to join, promise to join, or be pledged to become a member of, any such public high school fraternity, sorority or secret society, as defined in Section 37-11-37.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Cross References** — Public high school fraternity, sorority or secret society-definition; illegality; membership or participation in activities; solicitation of pupils, see §§ 37-11-37 through 37-11-41, 37-11-45.

Similar provision pertaining to junior college fraternities, sororities or secret societies, see § 37-29-241.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Student elected homecoming courts are not violation of statutes governing organization of high school fraternities and sororities. Furtenberry Oct. 6, 1993, A.G. Op. #93-0720.

## § 37-11-45. Public high school fraternity, sorority or secret society; solicitation of pupils.

It shall be unlawful for any person not enrolled in any such public high school to solicit any pupil enrolled in any such public high school, to join or pledge himself or herself to become a member of any such public high school fraternity, sorority, or secret society, or to solicit any such pupil to attend a meeting thereof or any meeting where the joining of any such public high school fraternity, sorority, or secret organization shall be encouraged.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00) for each and every offense.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Cross References —** Public high school fraternity, sorority or secret society-definition; illegality; membership or participation in activities; duties of boards of trustees; solicitation of pupils, see §§ 37-11-37 through 37-11-43.

Similar provision pertaining to junior college fraternities, sororities or secret societies, see § 37-29-243.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

### OPINIONS OF THE ATTORNEY GENERAL

Student elected homecoming courts are not violation of statutes governing organization of high school fraternities and sororities. Furtenberry Oct. 6, 1993, A.G. Op. #93-0720.

### RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

## § 37-11-47. Stonewall Jackson Memorial Board; Memorial Fund.

(1) There is hereby created the Mississippi Stonewall Jackson Memorial Board, which shall have as its purpose the memorializing of that great American and Confederate General, Stonewall Jackson, through a program of education initiated by Stonewall Jackson Memorial, Inc. The Mississippi

Stonewall Jackson Memorial Board shall be governed by a board of trustees, who shall serve without compensation. The board of trustees shall be composed of three (3) members, the Mississippi State Superintendent of Public Education, the Director of the Mississippi Department of Archives and History, and the President of Stonewall Jackson Memorial, Inc. The board of trustees shall be vested with the power to administer this section in its entirety and to establish the Mississippi Stonewall Jackson Memorial Fund.

(2) From and after March 13, 1990, the Stonewall Jackson Memorial Board shall be abolished by operation of law, and any monies appropriated or donated to or deposited in the Stonewall Jackson Memorial Fund shall be received, invested and administered by the Board of Trustees of the Mississippi Department of Archives and History as it deems advisable in line with sound business procedure. The Board of Trustees of the Mississippi Department of Archives and History may spend the interest derived from the Mississippi Stonewall Jackson Memorial Fund to support the programs and activities of the Junior Historical Society of Mississippi and thereby promote the study of Mississippi history. No part of the principal of such fund shall be disbursed for any purpose, and all grants to the Junior Historical Society shall be taken from the interest derived from investments only.

**HISTORY: Codes, 1942, § 6228.7; Laws, 1956, ch. 354, §§ 1, 2; Laws, 1990, ch. 381, § 1, eff from and after passage (approved March 13, 1990).**

**Cross References —** State superintendent of public education, see § 37-3-9, 37-3-11. Department of archives and history generally, see § 39-5-1 et seq.

## § 37-11-49. Wearing of approved eye protective devices required during participation in certain vocational, industrial arts, and chemical-physical laboratory courses of instruction.

(1) Each student and teacher in schools, colleges, universities, or other educational institutions, while participating in or observing any of the following courses of instruction:

(a) Vocational, technical, industrial arts, chemical, or chemical-physical, involving exposure to:

(i) Hot molten metals, or other molten materials;

(ii) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;

(iii) Heat treatment, tempering, or kiln firing of any metal or other materials;

(iv) Gas or electric arc welding, or other forms of welding processes;

(v) Caustic or explosive materials; or

(b) Chemical, physical, or combined chemical-physical laboratories involving caustic or explosive materials, hot liquids or solids, injurious radiations, or other hazards not enumerated; is required to wear an appropriate industrial quality eye protective device at all times.

(2) For purposes of this section unless the context indicates otherwise "Industrial quality eye protective device" shall mean a device meeting the standards of the American National Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1-1968, and subsequent revisions thereof, approved by the American National Standards Institute, Inc.

(3) Such devices may, at the discretion of the individual school, be

(a) furnished for all students and teachers;

(b) purchased and sold at cost to students and teachers; or

(c) made available for a moderate rental fee.

Such devices shall be furnished to all visitors to such shops and laboratories.

(4) The state superintendent of education shall prepare and circulate to each public and private educational institution in this state instructions and recommendations for implementing the eye safety provisions of this section.

**HISTORY: Laws, 1974, ch. 386, eff from and after passage (approved March 21, 1974).**

**Cross References —** State superintendent of public education, see § 37-3-9, 37-3-11.

### RESEARCH REFERENCES

**ALR.**

Products liability: cutting or heating torches. 84 A.L.R.4th 1123.

## § 37-11-51. Documents exempt from Public Records Act.

(1) Test questions and answers in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are to be used in future academic examinations, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Letters of recommendation in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, respecting admission to any educational agency or institution, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(3)(a) Except as provided in paragraph (b) of this subsection, documents, records, papers, data, protocols, information or materials in the possession of a community college or state institution of higher learning that are created, collected, developed, generated, ascertained or discovered during the course of academic research, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(b) The exemption under paragraph (a) of this subsection shall not apply to a public record that has been published, copyrighted, trademarked or patented.

(4) Unpublished manuscripts, preliminary analyses, drafts of scientific or academic papers, plans or proposals for future research and prepublication peer reviews in the possession of a community college or state institution of

higher learning, or submitted and accepted for publication by publishers shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(5) Nothing in this section shall otherwise create a public record right over, or shall impede or infringe upon, the copyright in any work.

(6) School safety plan documents containing preventive services listed in Section 37-3-83 shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

**HISTORY: Laws, 1983, ch. 424, § 16; Laws, 2014, ch. 409, § 1; Laws, 2016, ch. 349, § 1, eff from and after July 1, 2016.**

**Editor's Notes** — "The Mississippi Public Records Act of 1983," referred to in this section, is Laws, 1983, ch. 424, §§ 1-9, which appears as § 25-61-1 et seq.

**Cross References** — Exemption of certain school safety plan documents containing preventive services listed in this section from Mississippi Public Records Act of 1983, see § 37-11-51.

## § 37-11-53. School district discipline plans; appearance by parents, guardians or custodians at discipline conferences; recovery from parents for damage or destruction of school property; parent allowed to accompany child to school as alternative to child's suspension.

(1) A copy of the school district's discipline plan shall be distributed to each student enrolled in the district, and the parents, guardian or custodian of such student shall sign a statement verifying that they have been given notice of the discipline policies of their respective school district. The school board shall have its official discipline plan and code of student conduct legally audited on an annual basis to insure that its policies and procedures are currently in compliance with applicable statutes, case law and state and federal constitutional provisions. As part of the first legal audit occurring after July 1, 2001, the provisions of this section, Section 37-11-55 and Section 37-11-18.1, shall be fully incorporated into the school district's discipline plan and code of student conduct.

(2) All discipline plans of school districts shall include, but not be limited to, the following:

(a) A parent, guardian or custodian of a compulsory-school-age child enrolled in a public school district shall be responsible financially for his or her minor child's destructive acts against school property or persons;

(b) A parent, guardian or custodian of a compulsory-school-age child enrolled in a public school district may be requested to appear at school by the school attendance officer or an appropriate school official for a conference regarding acts of the child specified in paragraph (a) of this subsection, or for any other discipline conference regarding the acts of the child;

(c) Any parent, guardian or custodian of a compulsory-school-age child enrolled in a school district who refuses or willfully fails to attend such discipline conference specified in paragraph (b) of this section may be summoned by proper notification by the superintendent of schools or the school attendance officer and be required to attend such discipline conference; and

(d) A parent, guardian or custodian of a compulsory-school-age child enrolled in a public school district shall be responsible for any criminal fines brought against such student for unlawful activity occurring on school grounds or buses.

(3) Any parent, guardian or custodian of a compulsory-school-age child who (a) fails to attend a discipline conference to which such parent, guardian or custodian has been summoned under the provisions of this section, or (b) refuses or willfully fails to perform any other duties imposed upon him or her under the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not to exceed Two Hundred Fifty Dollars ($250.00).

(4) Any public school district shall be entitled to recover damages in an amount not to exceed Twenty Thousand Dollars ($20,000.00), plus necessary court costs, from the parents of any minor under the age of eighteen (18) years and over the age of six (6) years, who maliciously and willfully damages or destroys property belonging to such school district. However, this section shall not apply to parents whose parental control of such child has been removed by court order or decree. The action authorized in this section shall be in addition to all other actions which the school district is entitled to maintain and nothing in this section shall preclude recovery in a greater amount from the minor or from a person, including the parents, for damages to which such minor or other person would otherwise be liable.

(5) A school district's discipline plan may provide that as an alternative to suspension, a student may remain in school by having the parent, guardian or custodian, with the consent of the student's teacher or teachers, attend class with the student for a period of time specifically agreed upon by the reporting teacher and school principal. If the parent, guardian or custodian does not agree to attend class with the student or fails to attend class with the student, the student shall be suspended in accordance with the code of student conduct and discipline policies of the school district.

**HISTORY: Laws, 1991, ch. 539, § 3; Laws, 1992, ch. 519, § 5; Laws, 1994, ch. 607, § 14; Laws, 1995, ch. 452, § 1; Laws, 2001, ch. 486, § 8, eff from and after July 1, 2001.**

**Editor's Notes —** Laws, 2001, ch. 486, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.' "

**Cross References —** Code of student conduct, see § 37-11-55.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JUDICIAL DECISIONS

**1. In general.**

Section 37-11-53 neither abrogates nor alters the post-punishment remedies available to students under Mississippi common law for excessive punishment. Harris v. Tate County Sch. Dist., 882 F. Supp. 90, 1995 U.S. Dist. LEXIS 4718 (N.D. Miss. 1995).

## OPINIONS OF THE ATTORNEY GENERAL

If a mandatory school uniform rule furthers a substantial, legitimate interest of the school district, as determined by the school board, then it is within the discretion of a school board, with proper notice, to prescribe the discipline to be administered for the violation of the rule or regulation; assuming that the child is financially able to purchase the required uniform, a school district may administer, subject to procedural due process, appropriate disciplinary measures for refusal to comply with the school rule, including suspension or expulsion; however, long term out-of-school suspension or expulsion for violation of a school uniform policy is not permitted. Smith, June 11, 1999, A.G. Op. #99-0274.

A school board may, with proper notice, adopt a rule wherein further property belonging to the school may be withheld from a student who has lost, destroyed, or damaged school property entrusted to him or her until such time as the student or parents reimburse the school for the property. Chaney, Jr., Jan. 28, 2000, A.G. Op. #99-0723.

A school district has the authority to have a student tested for suspicion of using drugs without first securing the parent's or guardian's permission. Montgomery, Aug. 20, 2006, A.G. Op. 06-0513.

## RESEARCH REFERENCES

**ALR.**

School's Violation of Student's Substantive Due Process Rights by Suspending or Expelling Student. 90 A.L.R.6th 235.

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

## § 37-11-54. State Board of Education to develop list of conflict resolution and peer mediation materials, models, and curricula from evidence-based practices and positive behavioral intervention supports.

The State Board of Education shall develop a list of recommended conflict resolution and mediation materials, models and curricula that are developed from evidence-based practices and positive behavioral intervention supports to address responsible decision making, the causes and effects of school violence and harassment, cultural diversity, and nonviolent methods for resolving conflict, including peer mediation, and shall make the list available to local school administrative units and school buildings before the beginning of the 2007-2008 school year. In addition, local school boards shall incorporate evidence-based practices and positive behavioral intervention supports into individual school district policies and Codes of Conduct. In developing this list, the board shall emphasize materials, models and curricula that currently are being used in Mississippi and that the board determines to be effective. The board shall include at least one (1) model that includes instruction and guidance for the voluntary implementation of peer mediation programs and one (1) model that provides instruction and guidance for teachers concerning the integration of conflict resolution and mediation lessons into the existing classroom curriculum.

**HISTORY: Laws, 2001, ch. 391, § 1; Laws, 2001, ch. 486, § 5; Laws, 2003, ch. 416, § 5; Laws, 2007, ch. 416, § 5; Laws, 2010, ch. 488, § 8, eff from and after July 1, 2010.**

**Editor's Notes —** Laws of 2001, ch. 486, § 1, provides:
"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.' "

## § 37-11-55. Code of student conduct.

The local school board shall adopt and make available to all teachers, school personnel, students and parents or guardians, at the beginning of each school year, a code of student conduct developed in consultation with teachers, school personnel, students and parents or guardians. The code shall be based on the rules governing student conduct and discipline adopted by the school board and shall be made available at the school level in the student handbook or similar publication. The code shall include, but not be limited to:

(a) Specific grounds for disciplinary action under the school district's discipline plan;

(b) Procedures to be followed for acts requiring discipline, including suspensions and expulsion, which comply with due process requirements;

(c) An explanation of the responsibilities and rights of students with regard to: attendance; respect for persons and property; knowledge and observation of rules of conduct; free speech and student publications; assembly; privacy; and participation in school programs and activities;

(d) Policies and procedures recognizing the teacher as the authority in classroom matters, and supporting that teacher in any decision in compliance with the written discipline code of conduct. Such recognition shall include the right of the teacher to remove from the classroom any student who, in the professional judgment of the teacher, is disrupting the learning environment, to the office of the principal or assistant principal. The principal or assistant principal shall determine the proper placement for the student, who may not be returned to the classroom until a conference of some kind has been held with the parent, guardian or custodian during which the disrupting behavior is discussed and agreements are reached that no further disruption will be tolerated. If the principal does not approve of the determination of the teacher to remove the student from the classroom, the student may not be removed from the classroom, and the principal, upon request from the teacher, must provide justification for his disapproval;

(e) Policies and procedures for dealing with a student who causes a disruption in the classroom, on school property or vehicles, or at school-related activities;

(f) Procedures for the development of behavior modification plans by the school principal, reporting teacher and student's parent for a student who causes a disruption in the classroom, on school property or vehicles, or at school-related activities for a second time during the school year; and

(g) Policies and procedures specifically concerning gang-related activities in the school, on school property or vehicles, or at school-related activities.

**HISTORY: Laws, 1991, ch. 539, § 4; Laws, 2001, ch. 486, § 7; Laws, 2004, ch. 380, § 1, eff from and after July 1, 2004.**

**Editor's Notes** — Laws of 2001, ch. 486, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi School Safety Act of 2001.' "

**Cross References** — Suspension of pupils, see § 37-9-71.

Expulsion of student possessing controlled substance or weapon or committing violent act, see § 37-11-18.

Expulsion of habitually disruptive students, see § 37-11-18.1.

Suspension or expulsion of student damaging school property, see § 37-11-19.

School districts discipline plan, see § 37-11-53.

## JUDICIAL DECISIONS

**1. In general.**

High school principal's deletion from school-sponsored student newspaper of pages containing articles he reasonably considered objectionable did not violate student's First Amendment rights. Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592, 1988 U.S. LEXIS 310 (U.S. 1988).

## OPINIONS OF THE ATTORNEY GENERAL

If a mandatory school uniform rule furthers a substantial, legitimate interest of the school district, as determined by the school board, then it is within the discretion of a school board, with proper notice, to prescribe the discipline to be administered for the violation of the rule or regulation; assuming that the child is financially able to purchase the required uniform, a school district may administer, subject to procedural due process, appropriate disciplinary measures for refusal to comply with the school rule, including suspension or expulsion; however, long term out-of-school suspension or expulsion for violation of a school uniform policy is not permitted. Smith, June 11, 1999, A.G. Op. #99-0274.

A school district has the authority to have a student tested for suspicion of using drugs without first securing the parent's or guardian's permission. Montgomery, Aug. 20, 2006, A.G. Op. 06-0513.

## RESEARCH REFERENCES

**ALR.**

Right of action under Title IX of Education Amendments Act of 1972 (20 USCS §§ 1681 et seq.) against school or school district for sexual harassment of student by student's peer. 141 A.L.R. Fed. 407.

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

## § 37-11-57. Immunity of school personnel from liability for carrying out action in enforcing rules regarding control, discipline, suspension and expulsion of students; exception for students with disabilities.

(1) Except in the case of excessive force or cruel and unusual punishment, a public school teacher, assistant teacher, principal, or an assistant principal acting within the course and scope of his employment shall not be liable for any

action carried out in conformity with state or federal law or rules or regulations of the State Board of Education or the local school board or governing board of a charter school regarding the control, discipline, suspension and expulsion of students. The local school board shall provide any necessary legal defense to a teacher, assistant teacher, principal, or assistant principal in the school district who was acting within the course and scope of his employment in any action which may be filed against such school personnel. A school district or charter school, as the case may be, shall be entitled to reimbursement for legal fees and expenses from its employee if a court finds that the act of the employee was outside the course and scope of his employment, or that the employee was acting with criminal intent. Any action by a school district or charter school against its employee and any action by the employee against the school district or charter school for necessary legal fees and expenses shall be tried to the court in the same suit brought against the school employee.

(2) Corporal punishment administered in a reasonable manner, or any reasonable action to maintain control and discipline of students taken by a public school teacher, assistant teacher, principal or assistant principal acting within the scope of his employment or function and in accordance with any state or federal laws or rules or regulations of the State Board of Education or the local school board or governing board of a charter school does not constitute negligence or child abuse. No public school teacher, assistant teacher, principal or assistant principal so acting shall be held liable in a suit for civil damages alleged to have been suffered by a student as a result of the administration of corporal punishment, or the taking of action to maintain control and discipline of a student, unless the court determines that the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety. For the purposes of this subsection, "corporal punishment" means the reasonable use of physical force or physical contact by a teacher, assistant teacher, principal or assistant principal, as may be necessary to maintain discipline, to enforce a school rule, for self-protection or for the protection of other students from disruptive students.

(3) Notwithstanding subsection (2) of this section a public school teacher, assistant teacher, principal, assistant principal or other school personnel is prohibited from using corporal punishment, as defined in subsection (2) of this section, on any student with a disability. No school personnel shall be granted immunity from liability under subsection (2) of this section for the use of corporal punishment on a student with a disability. For purposes of this subsection, the term "student with a disability" means a student who has an individualized education plan (IEP) under the Individuals with Disabilities Education Act (IDEA) or a Section 504 plan under the Rehabilitation Act of 1973. The term "school personnel" includes all individuals employed on a full-time or part-time basis by a public school.

**HISTORY: Laws, 1991, ch. 539, § 5; Laws, 1994, ch. 607, § 16; Laws, 1997, ch. 512, § 1; Laws, 2013, ch. 497, § 57, eff from and after July 1, 2013; Laws, 2019, ch. 354, § 1, eff from and after July 1, 2019.**

**Amendment Notes —**

The 1997 amendment to Miss. Code Section 37-11-57 (2) by House Bill No. 313, relating to corporal punishment, is prospective in application and not retroactive and can only be used as a defense to actions occurring after July 1, 1997, the effective date of the amendment. Dantin, Aug. 1, 1997, A.G. Op. #97-0461.

The 2019 amendment added (3).

**Cross References —** Exemption of governmental entities from liability, see § 11-46-9.

School district's discipline plan, see § 37-11-53.

Code of student conduct, see § 37-11-55.

**Federal Aspects—** Individuals with Disabilities Education Act (IDEA), see 20 USCS §§ 1400 et seq.

## JUDICIAL DECISIONS

**6. Illustrative cases.**

When a teacher's aide was escorting the autistic child to his classroom, the child became agitated while the aide continued to move him through the hallway. The child suffered bruises as a result of the teacher's aide's fully sensible attempts to restrain him, and no treatment or medication was warranted or prescribed for the bruises; the aide's restraint of the child constituted control and discipline under Miss. Code Ann. § 37-11-57, and the circuit court properly applied Miss. Code Ann. § 11-46-9(1)(x) in finding that the actions taken did not constitute wanton and willful conduct such as to allow the parents to recover damages. Pigford v. Jackson Pub. Sch. Dist., 910 So. 2d 575, 2005 Miss. App. LEXIS 90 (Miss. Ct. App.), cert. denied, 920 So. 2d 1008, 2005 Miss. LEXIS 545 (Miss. 2005).

## RESEARCH REFERENCES

**ALR.**

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 A.L.R.5th 1.

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

## § 37-11-59. Repealed.

Repealed by Laws, 1995, ch. 452, § 2, eff from and after July 1, 1995.
[Laws, 1994, ch. 607, § 15.]

**Editor's Notes —** Former § 37-11-59 related to failure of parent, guardian or custodian to attend school conferences; penalty. For similar provisions, see § 37-11-53.

## § 37-11-61. Local school districts and agricultural high schools to provide parents information about meningococcal disease; State Board of Health to develop information about meningococcal disease for distribution to parents.

(1) Local school boards shall ensure that all public schools and agricultural high schools provide parents and guardians with information about meningococcal disease and the effectiveness of vaccination against meningo-

coccal disease. Such information may be provided through the school district Web site, student handbook or other appropriate means of dissemination of information. Such information shall be updated annually if new information on such disease is available. This information shall include the causes, symptoms and means by which meningococcal disease is spread and the places where parents and guardians may obtain additional information and vaccinations for their children. Nothing in this section shall be construed to require a local school board or school to provide or purchase vaccine against meningococcal disease.

(2) The State Board of Health shall develop and make available educational materials appropriate for distribution so that the information required by this section can be provided to parents and guardians. The Department of Health may provide this information, at its discretion, electronically, on its Web site. Nothing in this section shall be construed to require the Department of Health to provide or purchase vaccine against meningococcal disease.

**HISTORY: Laws, 2006, ch. 501, § 1; Laws, 2007, ch. 416, § 6; Laws, 2010, ch. 488, § 9, eff from and after July 1, 2010.**

**Cross References —** State Board of Health generally, see § 41-3-1 et seq.
State Department of Health, see § 41-3-15.

## § 37-11-63. Local school boards, school superintendents and school principals not permitted to prohibit teachers from discussing and answering questions about the origin of life.

No local school board, school superintendent or school principal shall prohibit a public school classroom teacher from discussing and answering questions from individual students on the origin of life.

**HISTORY: Laws, 2006, ch. 554, § 3, eff from and after passage (approved Apr. 20, 2006).**

**Cross References —** Local school boards not prohibited from allowing references to religion in public school courses, see § 37-13-161.

## § 37-11-64. Prohibition against school administrators or other employees changing, altering or otherwise influencing grade received by student from teacher; exceptions; violation.

(1) No school board member, school superintendent, assistant superintendent, principal, guidance counselor, other teachers, coaches, or other administrative staff members of the school or the central staff of a local school board shall attempt, directly or indirectly, to change, alter, or otherwise affect the grade received by a student from his teacher except as otherwise specifically allowed by this section.

(2)(a) A teacher's determination of a student's grade as a measure of the academic achievement or proficiency of the student shall not be altered or changed in any manner by any school official or employee other than the teacher except as provided in this subsection.

(b) A school official or employee having authority provided under formally adopted written rules and procedures adopted by the local school board to change a student's grade can take such action only upon it being determined that the grade is an error or that the grade is demonstrably inconsistent with the teacher's grading policy.

(3) Any local school district or personnel employed by the school district who violates the provisions of this section shall cause the local school district or school to be subject to losing its accreditation in the manner determined by the policies and procedures of the State Board of Education.

**HISTORY: Laws, 2012, ch. 492, § 1, eff from and after July 1, 2012.**

## § 37-11-65. Students in grades 7-12 to be suspended from participation in extracurricular or athletic activity for failure to maintain certain cumulative grade point average.

A student who is enrolled in any grade higher than Grade 6 in a school district in this state must be suspended from participation in any extracurricular or athletic activity sponsored or sanctioned by the school district after a semester in which the student's cumulative grade point average is below a 2.0 on a 4.0 scale. The suspension from participation in extracurricular or athletic activities may not be removed until the student's cumulative grade point average in a succeeding semester is 2.0 or higher on a 4.0 scale. A student with a cumulative grade point average below a 2.0 on a 4.0 scale at the semester of an academic school year shall be suspended from participation in extracurricular or athletic activities in the succeeding academic school year until the student's cumulative grade point average is 2.0 or higher on a 4.0 scale.

**HISTORY: Laws, 2009, ch. 516, § 2, eff from and after passage (approved Apr. 8, 2009).**

## § 37-11-66. Local school board adoption and implementation of written policy regarding school district's requirement for awarding a minimum grade.

Each local school board shall adopt and implement a written policy with regard to the school district's mandate or requirement for the awarding of a minimum grade which is in compliance with the grading policy requirement established by the State Board of Education Policy 403.

**HISTORY: Laws, 2011, ch. 516, § 3, eff from and after July 1, 2011.**

## § 37-11-67. Bullying or harassing behavior in public schools prohibited.

(1) As used in this section, "bullying or harassing behavior" is any pattern of gestures or written, electronic or verbal communications, or any physical act or any threatening communication, or any act reasonably perceived as being motivated by any actual or perceived differentiating characteristic, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

(a) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or

(b) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

(2) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.

(3) No person shall engage in any act of reprisal or retaliation against a victim, witness or a person with reliable information about an act of bullying or harassing behavior.

(4) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.

(5) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior should report the incident to the appropriate school official.

(6) Conduct described in subsection (1) of this section is considered bullying if that conduct interferes with a student's education or substantially disrupts the operation of a school.

**HISTORY: Laws, 2010, ch. 508, § 1; Laws, 2017, ch. 365, § 1, eff from and after July 1, 2017.**

**Cross References —** Applicability of the provisions of this section to charter schools, see § 37-28-45.

### JUDICIAL DECISIONS

**1. Duty to protect from bullying.**

Examining discretionary-function immunity under Miss. Code Ann. § 11-46-9(1)(d) and case law, the overarching function involved, holding students to strict account for disorderly conduct and preventing acts of bullying, is ministerial. And while Miss. Code Ann. §§ 37-11-67 and 37-11-69 give a school district discretion as to how to prevent bullying, these statutes do not provide discretion as to whether to prevent bullying. Nor do these statutes override the ministerial statutory duty found in Miss. Code Ann. § 37-

9-69 to provide a safe school environment. Smith v. Leake Cnty. Sch. Dist., 195 So. 3d 771, 2016 Miss. LEXIS 293 (Miss. 2016).

## § 37-11-69. Anti-bullying personnel and discipline policies and code of student conduct.

(1) Each local school district shall include in its personnel policies, discipline policies and code of student conduct a prohibition against bullying or harassing behavior and adopt procedures for reporting, investigating and addressing such behavior, that:

(a) Prohibit the bullying of a student;

(b) Prohibit retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;

(c) Establish a procedure for providing notice of an incident of bullying to a parent or guardian of the victim and a parent or guardian of the bully within a reasonable amount of time after the incident;

(d) Establish the actions a student should take to obtain assistance and intervention in response to bullying;

(e) Set out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;

(f) Establish procedures for reporting an incident of bullying, investigating a reported incident of bullying and determining whether the reported incident of bullying occurred;

(g) Prohibit the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; and

(h) Require that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 USCS Section 1400 et seq.).

(2) The policies must recognize the fundamental right of every student to take reasonable actions as may be necessary to defend himself or herself from an attack by another student who has evidenced menacing or threatening behavior through bullying or harassing.

(3) The procedure for reporting bullying established under subsection (1) of this section must be posted on the district's Internet website.

**HISTORY: Laws, 2010, ch. 508, § 2; Laws, 2017, ch. 365, § 2, eff from and after July 1, 2017.**

### JUDICIAL DECISIONS

**1. Duty to protect from bullying.**

Examining discretionary-function immunity under Miss. Code Ann. § 11-46-9(1)(d) and case law, the overarching function involved, holding students to strict account for disorderly conduct and preventing acts of bullying, is ministerial. And while Miss. Code Ann. §§ 37-11-67 and 37-11-69 give a school district discretion as to how to prevent bullying, these statutes do not provide discretion as to whether to prevent bullying. Nor do these statutes override the ministerial statutory duty found in Miss. Code Ann. § 37-9-69 to provide a safe school environment. Smith v. Leake Cnty. Sch. Dist., 195 So. 3d 771, 2016 Miss. LEXIS 293 (Miss. 2016).

## § 37-11-71. Mississippi Asthma and Anaphylaxis Child Safety Act; legislative findings and declarations; self-administration of asthma and anaphylaxis medication; policy regarding administration of auto-injectable epinephrine by authorized school personnel; school district requirements relating to children with asthma.

(1) This section shall be known and may be cited as the "Mississippi Asthma and Anaphylaxis Child Safety Act."

(2) The Legislature finds:

(a) That anaphylaxis is a serious allergic reaction that is rapid in onset and may cause death. Common triggers of anaphylaxis include food, insect bites, certain medications, and latex, with food being the most common trigger in children. Forty percent (40%) to fifty percent (50%) of those diagnosed with a food allergy are judged to have a high risk of anaphylaxis, and children with an undiagnosed food allergy may experience a first reaction at school. In addition, children with asthma are more at risk for anaphylaxis. Over ten percent (10%) of Mississippi children ages zero (0) through seventeen (17) years are living with asthma.

(b) That epinephrine is the primary treatment for anaphylaxis with no absolute contraindication to its use for a life-threatening reaction. The National Institute of Allergy and Infectious Diseases recommends that epinephrine be given promptly to treat anaphylaxis because delays in the administration of epinephrine can result in rapid decline and death. The American Academy of Allergy, Asthma and Immunology recommends that epinephrine injectors should be included in all emergency medical treatment kits in schools. The American Academy of Pediatrics recommends that anaphylaxis medications should be kept in each school and made available to trained staff for administration in an emergency.

(c) Therefore, the Legislature declares it is the intent of this section to protect the health and life of children in their school environment through the use of protocols and standing orders for the emergency treatment of asthma, anaphylaxis, and all other life-threatening diseases.

(3) The school board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of asthma and anaphylaxis medication pursuant to the requirements of this section.

(4) As used in this section:

(a) "Parent" means parent or legal guardian.

(b) "Auto-injectable epinephrine" means a medical device for the immediate administration of epinephrine to a person at risk for anaphylaxis.

(c) "Asthma and anaphylaxis medication" means inhaled bronchodilator and auto-injectable epinephrine.

(d) "Self-administration of prescription asthma and/or anaphylaxis medication" means a student's discretionary use of prescription asthma and/or anaphylaxis medication.

(5) A student with asthma and/or anaphylaxis is entitled to possess and self-administer prescription asthma and/or anaphylaxis medication while on school property, on school-provided transportation, or at a school-related event or activity if:

(a) The prescription asthma and/or anaphylaxis medication has been prescribed for that student as indicated by the prescription label on the medication;

(b) The self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health care provider; and

(c) A parent of the student provides to the school:

(i) Written authorization, signed by the parent, for the student to self-administer prescription asthma and/or anaphylaxis medication while on school property or at a school-related event or activity;

(ii) A written statement, signed by the parent, in which the parent releases the school district and its employees and agents from liability for an injury arising from the student's self-administration of prescription asthma and/or anaphylaxis medication while on school property or at a school-related event or activity unless in cases of wanton or willful misconduct;

(iii) A written statement from the student's physician or other licensed health care provider, signed by the physician or provider, that states:

1. That the student has asthma and/or anaphylaxis and is capable of self-administering the prescription asthma and/or anaphylaxis medication;

2. The name and purpose of the medication;

3. The prescribed dosage for the medication;

4. The times at which or circumstances under which the medication may be administered; and

5. The period for which the medication is prescribed.

(6) The physician's statement must be kept on file in the office of the school nurse of the school the student attends or, if there is not a school nurse, in the office of the principal of the school the student attends.

(7) If a student uses his/her medication in a manner other than prescribed, he/she may be subject to disciplinary action under the school codes. The disciplinary action shall not limit or restrict the student's immediate access to the medication.

(8) The school board of each local public school district and the governing body of each private and parochial school or school district shall adopt a policy authorizing a school nurse or trained school employee to administer auto-

injectable epinephrine to a student who the school nurse or trained school employee, in good faith, believes is having an anaphylactic reaction, whether or not the student has a prescription for epinephrine.

(9) Each public, private and parochial school may maintain a supply of auto-injectable epinephrine at the school in a locked, secure, and easily accessible location. A licensed physician, including, but not limited to, Mississippi State Department of Health District Health Officers, may prescribe epinephrine auto-injectors in the name of the school system or the individual school to be maintained for use when deemed necessary under the provisions of this section.

(10) Each public, private and parochial school that maintains a supply of auto-injectable epinephrine at the school shall require at least one (1) employee at each school to receive training from a registered nurse or a licensed medical physician in the administration of auto-injectable epinephrine.

(11) The State Department of Education shall require each public school district to take the following actions relating to the management of asthma in the school setting:

(a) Require that each child with asthma have a current school asthma plan (SAP) on file at the child's school for use by the school nurse, teachers and staff. Parents and guardians of a child with asthma are to have the child's SAP developed and signed by the child's health care provider. The SAP should include the child's name, date, school, age, physician's signature, parent's signature, instructions to the school if coughing or wheezing, and indicate dosage and delivery method details. If pre-medication is required, the SAP shall indicate dosage and delivery method details. The SAP will recommend whether the student administers his or her own medication or that school personnel may administer medication. The SAP must be updated annually.

(b) Adopt an emergency protocol that includes instructions for all school staff to follow in case of a major medical emergency for asthma and all other life-threatening diseases.

(c) Fully implement subsections (3) through (7) of this section, , which authorizes the self-administration of asthma medication at school by students.

(d) Provide comprehensive, in-service training on asthma for teachers, school nurses, and other staff appointed by school administration. The training should include instruction on the use of school asthma plans (SAPs), the requirements of this section, emergency protocols for asthma and policies in effect in that school relating to asthma.

(e) Require school nurses to attend certified asthma educators training. The cost of the training required for school nurses shall be paid by the American Lung Association.

(f) Require local school health councils to conduct a school health needs assessment that addresses and supports the implementation of the following: healthy school environment, physical activity, staff wellness, counseling/psychological services, nutrition services, family/community involvement, health education and health services. The results of the assessment must be used in the development of long-range maintenance plans that include specific indoor air quality components for each school building.

(g) Require local school health councils to adopt and support the implementation of a local school wellness policy that includes minimizing children's exposure to dust, gases, fumes and other pollutants that can aggravate asthma in the school setting. The policy must require the air quality and ventilation systems of schools to be assessed annually, which assessment may be accomplished with the Environmental Protection Agency's Tools for Schools Indoor Air Quality Checklist. The policy also must minimize the use of hazardous substances such as, but not limited to, chemical cleaning products and pesticides in and around school buildings during the hours that children are present at school. The policy must require all school construction projects to implement containment procedures for dusts, gases, fumes and other pollutants that trigger asthma.

(h) Implement an integrated pest management program that includes procedural guidelines for pesticide application, education of building occupants and inspection and monitoring of pesticide applications. The integrated pest management program may limit the frequency, duration and volume of pesticide application on school grounds.

(i) Require school bus operators to minimize the idling of school bus engines to prevent exposure of children and adults to diesel exhaust fumes.

(j) Allow schools and school districts, with a valid prescription, to accept donated auto-injectable epinephrine from public or private entities, and seek and apply for grants to obtain funding for purchasing auto-injectable epinephrine.

**HISTORY: Laws, 2010, ch. 512, § 2; Laws, 2014, ch. 464, § 1, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected statutory reference errors. In (11)(c), a reference to repealed section 41-79-31 was changed to read "subsections (3) through (7) of this section" and in (11)(d) it was changed to "this section." The Joint Committee ratified the corrections at its July 24, 2014, meeting.

## § 37-11-73. Disbursement of certain funds by school districts to nonprofit foundations under certain circumstances.

(1) This section applies only to those school districts in which there exists a foundation incorporated as a nonprofit organization, legally separate from any school district, which has as its sole purpose the receiving of grants, donations and gifts of real or personal property, or both, to be used and applied exclusively for educational purposes in a particular school district with the goals of enhancing the public educational experience of students and improving the quality of their instruction in that school district.

(2) Whenever an audit of a school district described under subsection (1) includes a finding that the foundation supporting the educational purposes of

that school district is considered to be a blended component unit of the district, as determined by Section 2100 of the "Codification of Governmental Accounting and Financial Reporting Standards," any funds belonging to the foundation which are transferred to the public funds of the school district upon the dissolution of the foundation due to the auditor's finding may be disbursed to any successor foundation that subsequently is incorporated as a nonprofit entity if:

(a) The successor foundation adopts as its primary mission the same purpose and goals as the original foundation;

(b) The funds of the successor foundation are not subject to any oversight by the school board of the school district, nor shall any member of the local school board serve as a member of the foundation's board of directors, and the successor foundation is structured legally in such a manner that the foundation is not considered, under generally accepted accounting principles, to be part of the school district;

(c) The funds that are the subject of the disbursement are to be used by the successor foundation in carrying out its purpose of enhancing the public educational experience and quality of the instruction available to students in the school district, which is a purpose recognized to be primarily a function of the government; and

(d) The precise amount of the principal of the funds to be disbursed, along with any interest that has been earned on the principal, less any amount previously obligated by the school district, has been determined through an independent analysis of the school district's fund or funds to which the predecessor foundation's funds were transferred.

(3) A disbursement of funds by a school district under this section is considered a disbursement made for a public purpose in consideration of the foundation's aid to the school district in discharging the district's governmental obligation to provide a quality education to the children of that school district.

**HISTORY: Laws, 2011, ch. 408, § 1, eff from and after July 1, 2011.**

## § 37-11-75. Certain nonpublic schools to include in driver's education program instruction in how a person should properly respond when stopped by law enforcement officers.

Any nonpublic school accredited by the State Board of Education or any other accreditation agency that offers a driver's education program shall include as part of such program the program developed by the Department of Public Safety under Section 37-25-29, related to how persons should properly respond when stopped by law enforcement officers.

**HISTORY: Laws, 2017, ch. 430, § 12, eff from and after July 1, 2017.**

**Editor's Notes —** Laws of 2017, ch. 430, § 14, provides:
"SECTION 14. Sections 1 through 12 of this act shall take effect and be in force from

and after July 1, 2017. Section 13 of this act shall take effect and be in force from and after its passage [approved April 17, 2017].”

# CHAPTER 12.

# MISSISSIPPI STUDENT RELIGIOUS LIBERTIES ACT OF 2013

| Sec. | |
|---|---|
| 37-12-1. | Short title. |
| 37-12-3. | Student expression. |
| 37-12-5. | Religious expression in class assignments. |
| 37-12-7. | Freedom to organize religious groups and activities. |
| 37-12-9. | Limited public forum; school district policy. |
| 37-12-11. | No authority to require participation in religious activities or violate constitutional rights. |
| 37-12-13. | No limitation on authority of public schools to maintain order, discipline and safety or to adopt and enforce student speech policies. |
| 37-12-15. | Applicability of chapter. |

## § 37-12-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Student Religious Liberties Act of 2013."

**HISTORY: Laws, 2013, ch. 334, § 1, eff from and after July 1, 2013.**

**Federal Aspects—** Individuals with Disabilities Education Act (IDEA), see 20 USCS §§ 1400 et seq.

## § 37-12-3. Student expression.

A public school district shall not discriminate against students or parents on the basis of a religious viewpoint or religious expression. A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

**HISTORY: Laws, 2013, ch. 334, § 2, eff from and after July 1, 2013.**

## § 37-12-5. Religious expression in class assignments.

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school district. Students may not be penalized or rewarded on account of the religious content of their work. If an assignment requires a student's viewpoint to be expressed in coursework, artwork or other written or oral assignments, a public school shall not penalize or reward a student on the basis of religious content or a religious viewpoint. In such an assignment, a student's academic work that expresses a religious viewpoint shall be evaluated based on ordinary academic standards of substance and relevance to the course curriculum or requirements of the coursework or assignment.

**HISTORY: Laws, 2013, ch. 334, § 3, eff from and after July 1, 2013.**

## § 37-12-7. Freedom to organize religious groups and activities.

Students in public schools may pray or engage in religious activities or religious expression before, during and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expression. Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, or other religious gatherings before, during and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the students' expression. If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the school district may not discriminate against groups that meet for prayer or other religious speech. A school district may disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Students in public schools may wear clothing, accessories and jewelry that display religious messages or religious symbols in the same manner and to the same extent that other types of clothing, accessories and jewelry that display messages or symbols are permitted.

**HISTORY: Laws, 2013, ch. 334, § 4, eff from and after July 1, 2013.**

## § 37-12-9. Limited public forum; school district policy.

(1) To ensure that the school district does not discriminate against a student's publicly stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or perceived affirmative school sponsorship or attribution to the district of a student's expression of a religious viewpoint, if any, a school district shall adopt a policy, which must include the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require the school district to:

(a) Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;

(b) Provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;

(c) Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd or indecent speech; and

(d) State, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position or expression of the district.

(2) The school district disclaimer required by subsection (1)(d) of this section must be provided at all graduation ceremonies. The school district must also continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

(3) Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

(4) All school districts shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a school district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools as provided by subsection (5) of this section, the district is in compliance with the provisions of this chapter covered by the model policy.

(5) Model policy governing voluntary religious expression in public schools. — In this section, "model policy" means a local policy adopted by the school district that is substantially similar to the following:

## ARTICLE I
## STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

## ARTICLE II
## STUDENT SPEAKERS AT NONGRADUATION EVENTS

The school district hereby creates a limited public forum for student speakers at all school events at which a student is to publicly speak. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion. Student speakers shall introduce:

(a) Football games;

(b) Any other athletic events designated by the district;

(c) Opening announcements and greetings for the school day; and

(d) Any additional events designated by the district, which may include, without limitation, assemblies and pep rallies.

The forum shall be limited in the manner provided by this article.

Only those students in the highest two (2) grade levels of the school and who hold one (1) of the following positions of honor based on neutral criteria are eligible to use the limited public forum: student council officers, class officers of the highest grade level in the school, captains of the football team, and other students holding positions of honor as the school district may designate.

An eligible student shall be notified of the student's eligibility, and a student who wishes to participate as an introducing speaker shall submit the student's name to the student council or other designated body during an announced period of not less than three (3) days. The announced period may be at the beginning of the school year, at the end of the preceding school year so student speakers are in place for the new year, or, if the selection process will be repeated each semester, at the beginning of each semester or at the end of the preceding semester so speakers are in place for the next semester. The names of the volunteering student speakers shall be randomly drawn until all names have been selected, and the names shall be listed in the order drawn. Each selected student will be matched chronologically to the event for which the student will be giving the introduction. Each student may speak for one (1) week at a time for all introductions of events that week, or rotate after each speaking event, or otherwise as determined by the district. The list of student speakers shall be chronologically repeated as needed, in the same order. The district may repeat the selection process each semester rather than once a year.

The subject of the student introductions must be related to the purpose of the event and to the purpose of marking the opening of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event. The subject must be designated, a student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

For as long as there is a need to dispel confusion over the nonsponsorship of the student's speech at each event in which a student will deliver an introduction, a disclaimer shall be stated in written or oral form, or both, such as, "The student giving the introduction for this event is a volunteering student selected on neutral criteria to introduce the event. The content of the introduction is the private expression of the student and does not reflect the endorsement, sponsorship, position or expression of the school district."

Certain students who have attained special positions of honor in the school have traditionally addressed school audiences from time to time as a tangential component of their achieved positions of honor, such as the captains of various sports teams, student council officers, class officers, homecoming kings and queens, prom kings and queens, and the like, and have attained their positions based on neutral criteria. Nothing in this policy eliminates the continuation of the practice of having these students, irrespective of grade level, address school audiences in the normal course of their respective positions. The school district shall create a limited public forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

## ARTICLE III
## STUDENT SPEAKERS AT GRADUATION CEREMONIES

The school district hereby creates a limited public forum consisting of an opportunity for a student to speak to begin graduation ceremonies and another student to speak to end graduation ceremonies. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion.

The forum shall be limited in the manner provided by this article.

Only students who are graduating and who hold one (1) of the following neutral criteria positions of honor shall be eligible to use the limited public forum: student council officers, class officers of the graduating class, the top three (3) academically ranked graduates, or a shorter or longer list of student leaders as the school district may designate. A student who will otherwise have a speaking role in the graduation ceremonies is ineligible to give the opening and closing remarks. The names of the eligible volunteering students will be randomly drawn. The first name drawn will give the opening and the second name drawn will give the closing.

The topic of the opening and closing remarks must be related to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event.

In addition to the students giving the opening and closing remarks, certain other students who have attained special positions of honor based on neutral criteria, including, without limitation, the valedictorian, will have speaking roles at graduation ceremonies. For each speaker, the school district shall set a maximum time limit reasonable and appropriate to the occasion and to the position held by the speaker. For this purpose, the district creates a limited public forum for these students to deliver the addresses. The subject of the addresses must be related to the purpose of the graduation ceremony, marking and honoring the occasion, honoring the participants and those in attendance, and the student's perspective on purpose, achievement, life, school, graduation, and looking forward to the future.

The subject must be designated for each student speaker, the student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

A written disclaimer shall be printed in the graduation program that states, "The students who will be speaking at the graduation ceremony were selected based on neutral criteria to deliver messages of the students' own choices. The content of each student speaker's message is the private expression of the individual student and does not reflect any position or expression of the school district or the board of trustees, or the district's administration, or employees of the district, or the views of any other graduate. The contents of these messages were prepared by the student volunteers, and the district refrained from any interaction with student speakers regarding the student speakers' viewpoints on permissible subjects."

### ARTICLE IV

### RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS

Students may express the students' beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of the students' submission. Homework and classroom work shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Students may not be penalized or rewarded on account of religious content. If a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, including literary quality, and not penalized or rewarded on account of its religious content.

### ARTICLE V

### FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES

Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before, during and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce the groups' meetings, for example, by advertising in a student newspaper, putting up posters, making announcements on a student activities bulletin board or public address system, or handing out leaflets, school authorities may not discriminate against groups that meet for prayer or other religious speech. School authorities may disclaim sponsorship of noncurricular groups and events, provided they administer the disclaimer in a manner that does not favor or disfavor groups that meet to engage in prayer or other religious speech.

**HISTORY: Laws, 2013, ch. 334, § 5, eff from and after July 1, 2013.**

## § 37-12-11. No authority to require participation in religious activities or violate constitutional rights.

This chapter shall not be construed to authorize this state or any of its political subdivisions to do either of the following:

(a) Require any person to participate in prayer or in any other religious activity.

(b) Violate the constitutional rights of any person.

**HISTORY: Laws, 2013, ch. 334, § 6, eff from and after July 1, 2013.**

## § 37-12-13. No limitation on authority of public schools to maintain order, discipline and safety or to adopt and enforce student speech policies.

This chapter shall not be construed to limit the authority of any public school to do any of the following:

(a) Maintain order and discipline on the campus of the public school in a content and viewpoint neutral manner.

(b) Protect the safety of students, employees and visitors of the public school.

(c) Adopt and enforce policies and procedures regarding student speech at school provided that the policies and procedures do not violate the rights of students as guaranteed by the United States and Mississippi constitutions and laws.

**HISTORY: Laws, 2013, ch. 334, § 7, eff from and after July 1, 2013.**

## § 37-12-15. Applicability of chapter.

This chapter applies beginning with the 2013-2014 school year.

**HISTORY: Laws, 2013, ch. 334, § 8, eff from and after July 1, 2013.**

# CHAPTER 13.

# CURRICULUM; SCHOOL YEAR AND ATTENDANCE

In General. .......... 37-13-1
School Year and Attendance. .......... 37-13-61
Mississippi Compulsory School Attendance Law. .......... 37-13-80
Comprehensive School Health Education Program. .......... 37-13-131
Home Economics Programs. .......... 37-13-151
Religious Matters in Public School Courses of Study. .......... 37-13-161
Sex and Abstinence Education. .......... 37-13-171
Character Education. .......... 37-13-181
Civil Rights and Human Rights Education. .......... 37-13-191

## IN GENERAL

Sec.
37-13-1. Uniform system of free public schools.
37-13-3. Doctrinal, sectarian or denominational teaching.
37-13-4. Voluntary participation in prayer generally.
37-13-4.1. Voluntary prayer at school-related student events.
37-13-5. Display of Mississippi and United States flags; course of study.
37-13-6. Display of United States flag near public school buildings and in classrooms; student instruction in proper flag etiquette; daily recitation of pledge of allegiance at beginning of school day.
37-13-7. Pledges of allegiance to United States and Mississippi flags.
37-13-8. Period of quiet reflection at opening of school day.
37-13-9. Curriculum committee.
37-13-10. Public elementary schools to provide instruction in cursive reading and writing; exceptions.
37-13-11 through 37-13-17. Repealed.
37-13-19. Local school districts may allow course credit for completion of National Guard basic training to certain students.
37-13-20. Repealed.
37-13-21. Health education programs.
37-13-23 through 37-13-39. Repealed.
37-13-41. Reports by school superintendents as to type and amount of work performed in each grade.
37-13-43 through 37-13-51. Repealed.
37-13-52 through 37-13-57. Repealed.
37-13-58. Career education; duties of department of education; office of career education.
37-13-59. Career education; state coordinator; cooperation by state colleges and universities.
37-13-60. Career education; implementation of program by school districts; funding.
37-13-60.1. Career information delivery system.

### § 37-13-1. Uniform system of free public schools.

There shall be maintained a uniform system of free public schools consisting of grades one through twelve, which may be divided between grammar schools, junior high schools and high schools, or any combination thereof, on such basis and in such grades as the board of trustees of the school district involved, in its discretion, shall deem necessary and desirable.

**HISTORY: Codes, 1942, § 6216-01; Laws, 1953, Ex Sess, ch. 26, § 1, eff from and after July 1, 1954.**

**Cross References** — Authority for legislature to provide for maintenance and establishment of free public schools, see Miss. Const. Art. 8, § 201.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Discipline.

**1. In general.**

Handicapped child's right to education is guaranteed by state constitution, Article VIII, § 201, which is effectuated under § 37-13-1, which provides for maintenance of uniform system of free public schools. Jackson v. Franklin County School Bd., 806 F.2d 623, 1986 U.S. App. LEXIS 36316 (5th Cir. Miss. 1986).

**2. Discipline.**

When a student was suspended after allegedly intentionally inflicting cuts on her arm, the student's right to an education under Miss. Const. Art. VIII, § 201, effectuated by Miss. Code Ann. § 37-13-1, was not violated because she was offered placement in an alternative school instead of the suspension. Foster v. Tupelo Pub. Sch. Dist., 569 F. Supp. 2d 667, 2008 U.S. Dist. LEXIS 42205 (N.D. Miss. 2008).

## RESEARCH REFERENCES

**ALR.**

Validity of exaction of fees from children attending elementary or secondary public schools. 41 A.L.R.3d 752.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 6 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 3 et seq.

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

Seeking Educational Funding Equity in Mississippi: "I Asked for Water, You Gave Me Gasoline." 58 Miss. L. J. 247, Fall 1988.

**Practice References.**

Education Law (Matthew Bender).

## § 37-13-3. Doctrinal, sectarian or denominational teaching.

No doctrinal, sectarian or denominational teaching shall be permitted in public schools of this state. It shall be the duty of the county superintendents of education and the superintendents of municipal separate school districts to enforce the provisions of this section.

**HISTORY: Codes, 1942, § 6216-11; Laws, 1953, Ex Sess, ch. 26, § 11, eff from and after July 1, 1954.**

**Cross References** — County superintendents of education generally, see § 37-5-61 et seq.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## JUDICIAL DECISIONS

**1. In general.**

State statute requiring public schools that teach evolution to teach "creation science" as well, advances religious doctrine in violation of First Amendment's establishment of religion clause. Edwards v. Aguillard, 482 U.S. 578, 107 S. Ct. 2573, 96 L. Ed. 2d 510, 1987 U.S. LEXIS 2729 (U.S. 1987).

This section [Code 1942, § 6216-11] does not mean the teaching that mankind was spontaneously created by God is prohibited in state supported public schools. Smith v. State, 242 So. 2d 692, 1970 Miss. LEXIS 1390 (Miss. 1970).

## RESEARCH REFERENCES

**ALR.**

Giving of invocation with religious content at public-school-sponsored events to which public is invited or admitted as violation of establishment clause of First Amendment. 98 A.L.R. Fed. 206.

Constitutionality of teaching or suppressing teaching of Biblical creationism or Darwinian evolution theory in public schools. 102 A.L.R. Fed. 537.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 419, 420, 422, 431 et seq.

**CJS.**

78A C.J.S., Schools and School Districts § 1071-1073.

**Law Reviews.**

McMillan, With Religious Speech, Funding is Fundamental: *Rosenberger v. Rector and Visitors of University of Virginia,* 115 S. Ct. 2510 (1995), 17 Miss. C. L. Rev. 149, Fall, 1996.

**Lawyers' Edition.**

Establishment and free exercise of religion clauses of Federal Constitution's first Amendment as applied to public schools – Supreme Court Cases. 96 L. Ed. 2d 828.

## § 37-13-4. Voluntary participation in prayer generally.

It shall be lawful for any teacher or school administrator in any of the schools of the state which are supported, in whole or in part, by the public funds of the state, to permit the voluntary participation by students or others in prayer. Nothing contained in this section shall authorize any teacher or other school authority to prescribe the form or content of any prayer. The provisions of this section shall not be construed to amend or repeal the provisions of Section 37-13-4.1 but shall be considered as supplemental and in addition to the provisions of Section 37-13-4.1.

**HISTORY: Laws, 1979, ch. 374; Laws, 1994, ch. 609, § 2, eff from and after July 1, 1994.**

**Cross References** — Voluntary prayer at school-related student events, see § 37-13-4.1.

Period of quiet reflection at opening of school day, see § 37-13-8.

Religious matters in public school courses of study, see § 37-13-161 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Constitutionality.

**1. In general.**

Equal Access Act (20 USCS §§ 4071-4074) prohibited high school from barring student religious group meetings on school premises, and did not violate First Amendment establishment clause; school maintained "limited open forum" within meaning of Act, therefore violated Act by denying students' request to form religious club since school's existing student groups included some which were "noncurriculum related" within definition of Act. Board of Educ. of Westside Community Schools v. Mergens, 496 U.S. 226, 110 S. Ct. 2356, 110 L. Ed. 2d 191, 1990 U.S. LEXIS 2880 (U.S. 1990).

**2. Constitutionality.**

Plaintiffs (students, parents and a civil liberties organization) were entitled to a preliminary injunction against enforcement of the school prayer statute (§§ 37-13-4, 37-13-4.1) except at high school graduation or commencement services, since (1) they demonstrated a substantial likelihood that they would prevail on their establishment clause challenge, (2) they demonstrated a substantial threat of irreparable harm, (3) granting of the injunction would have no bearing on the students' ability to freely exercise their existing First Amendment rights, and (4) the public interest would not be disserved by the issuance of an injunction aimed at preventing enforcement of a potentially unconstitutional statute. Ingebretsen v. Jackson Pub. Sch. Dist., 864 F. Supp. 1473, 1994 U.S. Dist. LEXIS 13561 (S.D. Miss. 1994), aff'd, 88 F.3d 274, 1996 U.S. App. LEXIS 379 (5th Cir. Miss. 1996).

Despite the entry of a consent decree prohibiting broadcasts of prayer, Bible readings or "other material of a religious devotional nature" over the public address systems of county schools, a justiciable controversy continued to exist over the constitutionality of § 37-13-4 where the remedy afforded in the consent decree was more narrowly drawn than the ban on religious practices in the county schools requested by the complaint. Doe v. Stegall, 653 F.2d 180, 1981 U.S. App. LEXIS 18626 (5th Cir. Miss. 1981).

## RESEARCH REFERENCES

**ALR.**

What constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 A.L.R.3d 1352.

Giving of invocation with religious content at public-school-sponsored events to which public is invited or admitted as violation of establishment clause of First Amendment. 98 A.L.R. Fed. 206.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools. 110 A.L.R. Fed. 211.

**Am. Jur.**

68 Am. Jur. 2d, Schools §§ 436, 437, 439.

**CJS.**

16 C.J.S., Constitutional Law § 514.

**Law Reviews.**

McMillan, With Religious Speech, Funding is Fundamental: *Rosenberger v. Rector and Visitors of University of Virginia,* 115 S. Ct. 2510 (1995), 17 Miss. C. L. Rev. 149, Fall, 1996.

**Lawyers' Edition.**

Establishment and free exercise of religion clauses of Federal Constitution's first Amendment as applied to public schools – Supreme Court Cases. 96 L. Ed. 2d 828.

## § 37-13-4.1. Voluntary prayer at school-related student events.

(1) The legislative intent and purpose for this section is to protect the

freedom of speech guaranteed by the First Amendment to the United States Constitution, to define for the citizens of Mississippi the rights and privileges that are accorded them on public school property, other public property or other property at school-related events; and to provide guidance to public school officials on the rights and requirements of law that they must apply. The intent and purpose of the Legislature is to accommodate the free exercise of religious rights of its student citizens in the public schools and at public school events as provided to them by the First Amendment to the United States Constitution and the judicial interpretations thereof as given by the United States Supreme Court.

(2) On public school property, other public property or other property, invocations, benedictions or nonsectarian, nonproselytizing student-initiated voluntary prayer shall be permitted during compulsory or noncompulsory school-related student assemblies, student sporting events, graduation or commencement ceremonies and other school-related student events.

(3) This section shall not diminish the right of any student or person to exercise his rights of free speech and religion, including prayer, as permitted by the United States Constitution, on public school property, other public property or other property, at times or events other than those stated in subsection (2) of this section.

(4) The exercise of the rights guaranteed under subsection (2) of this section shall not be construed to indicate any support, approval or sanction of the contents of any such prayer, invocation, benediction or other activity, or be construed as an unconstitutional use of any public property or other property by the State of Mississippi or any agency, department, board, commission, institution or other instrumentality thereof or any political subdivision of the state, including any county or municipality and any instrumentality thereof. The exercise of these rights on public school property, other public property or on other property for school-related activities, by students or others, shall not be construed as the promotion or establishment of any religion or religious belief.

(5) The provisions of this section are severable. If any part of this section is declared invalid or unconstitutional, that declaration shall not affect the part or parts that remain.

**HISTORY: Laws, 1994, ch. 609, § 1, eff from and after July 1, 1994.**

**Cross References —** Voluntary participation in prayer generally, see § 37-13-4.
Period of quiet reflection at opening of school day, see § 37-13-8.
Religious matters in public school courses of study, see – § 37-13-161 et seq.

## JUDICIAL DECISIONS

**1. In general.**

Plaintiffs (students, parents and a civil liberties organization) were entitled to a preliminary injunction against enforcement of the school prayer statute (§§ 37-13-4, 37-13-4.1) except at high school graduation or commencement services, since (1) they demonstrated a substantial likelihood that they would prevail on their establishment clause challenge, (2) they demonstrated a substantial threat of irreparable harm, (3) granting of the injunction would have no bearing on the students' ability to freely exercise their existing First Amendment rights, and (4) the public interest would not be disserved by the issuance of an injunction aimed at preventing enforcement of a potentially unconstitutional statute. Ingebretsen v. Jackson Pub. Sch. Dist., 864 F. Supp. 1473, 1994 U.S. Dist. LEXIS 13561 (S.D. Miss. 1994), aff'd, 88 F.3d 274, 1996 U.S. App. LEXIS 379 (5th Cir. Miss. 1996).

### RESEARCH REFERENCES

**ALR.**

What constitutes "prayer" under federal constitutional prohibition of prayer in public schools. 30 A.L.R.3d 1352.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools. 110 A.L.R. Fed. 211.

## § 37-13-5. Display of Mississippi and United States flags; course of study.

(1) The flag of the State of Mississippi and the flag of the United States shall be displayed in close proximity to the school building at all times during the hours of daylight when the school is in session when the weather will permit without damage to the flag. It shall be the duty of the board of trustees of the school district to provide for the flags and their display.

(2) Whenever the flag of the United States is to be flown at half-staff by order or instructions of the President or pursuant to federal law, all public schools shall lower the United States flag in accordance with the executive order or instructions or federal law. The school shall announce the reason that the flag is being flown at half-staff to all students in assembly or by teachers in the various classrooms or by prominently displaying written notice throughout the school stating the reason that the flag has been lowered.

(3) In all public schools there shall be given a course of study concerning the flag of the United States and the flag of the State of Mississippi. The course of study shall include the history of each flag and what they represent and the proper respect therefor. There also shall be taught in the public schools the duties and obligations of citizenship, patriotism, Americanism and respect for and obedience to law.

**HISTORY: Codes, 1942, § 6216-07; Laws, 1953, Ex Sess, ch. 26, § 7; Laws, 1970, ch. 360, § 1; Laws, 2002, ch. 457, § 2, eff from and after July 1, 2002.**

**Cross References —** Student instruction in proper flag etiquette, see § 37-13-6.
Applicability of the provisions of this section to charter schools, see § 37-28-45.
Criminal offense of desecration of national or state flag, see § 97-7-39.

### OPINIONS OF THE ATTORNEY GENERAL

The statute clearly implies that the United States and Mississippi flags are to be properly raised and lowered on a flag pole outside of the school building. Janus, April 24, 1998, A.G. Op. #98-0168.

## § 37-13-6. Display of United States flag near public school buildings and in classrooms; student instruction in proper flag etiquette; daily recitation of pledge of allegiance at beginning of school day.

(1) The flag of the United States shall be displayed in close proximity to the school building, on a proper staff, at all times during the hours of daylight when the school is in session when the weather will permit without damage to the flag. In addition, the flag of the United States shall be displayed in each classroom and in each principal room of the school building at all times while school is in session. It shall be the duty of the school boards of each school district to provide for the flags, proper flag staffs and their proper display. Each school district shall provide student instruction in the proper etiquette toward, correct display of, and respect for the flag, and in patriotic exercises. The instruction shall be a part of the district's fifth grade social studies curriculum or history curriculum, with the assistance of the State Department of Education.

(2) From and after July 1, 2002, the school boards of all public schools of this state shall require the teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at the beginning of the first hour of class each day school is in session, such oath of allegiance being as follows:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Any student or teacher who objects to reciting the oath of allegiance shall be excused from participating without penalty.

**HISTORY: Laws, 2002, ch. 457, § 1, eff from and after July 1, 2002.**

**Cross References —** Display of Mississippi and United States flags, course of study, see § 37-13-5.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## § 37-13-7. Pledges of allegiance to United States and Mississippi flags.

(1) The boards of trustees of the public schools of this state shall require the teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once during each school month, such oath of allegiance being as follows:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

(2) The official pledge of the State of Mississippi shall read as follows:

"I salute the flag of Mississippi and the sovereign state for which it stands with pride in her history and achievements and with confidence in her future under the guidance of Almighty God."

The pledge of allegiance to the Mississippi flag shall be taught in the public schools of this state, along with the pledge of allegiance to the United States flag.

**HISTORY: Codes, 1942, §§ 6216-08, 6216-08.5; Laws, 1953, Ex Sess, ch. 26, § 8; Laws, 1960, ch. 391; Laws, 1962, ch. 492, §§ 1-3.**

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 312, 386, 387, 394, 396.

## § 37-13-8. Period of quiet reflection at opening of school day.

(1) In each public school classroom, the local school governing board may authorize a brief period of quiet reflection for not more than sixty (60) seconds at the opening of school upon every school day.

(2) The moment of quiet reflection authorized by subsection (1) of this section is not intended to be and shall not be conducted as a religious service or exercise but is considered an opportunity for a moment of silent reflection.

**HISTORY: Laws, 2001, ch. 485, § 1, eff from and after July 1, 2001.**

**Cross References —** Voluntary participation in prayer at school or at school-related events, see §§ 37-13-4 and 37-13-4.1.

Religious matters in public school courses of study, see § 37-13-161 et seq.

## § 37-13-9. Curriculum committee.

The state board of education is hereby authorized to appoint a curriculum committee, composed of professional and lay members, not to exceed seven in number, to make a continuous study of the curriculum of the public schools and to make recommendations to the state board of education from time to time as to changes which should be made in the curriculum in the grammar school grades and in the high school grades. The members of such committee as of July 1, 1954, shall continue to serve until the expiration of the terms for which they were appointed; thereafter the members of such committee shall be appointed and serve for a term of two years and until their successors are appointed. Each member of said committee shall receive a per diem of Fifteen Dollars ($15.00) for each day actually spent attending the meetings of the committee and, in addition, each member shall be reimbursed for actual travel expenses at the rate of Six cents ($.06) per mile for each mile traveled in attending the meetings of the committee. However, the total amount paid to any member of the committee for per diem shall not exceed the sum of One Hundred Fifty Dollars ($150.00) in any one year. The per diem and travel expenses provided for herein shall be paid out of such appropriation as may be made for such purpose by the legislature.

**HISTORY: Codes, 1942, § 6216-03; Laws, 1953, Ex Sess, ch. 26, § 3, eff from and after July 1, 1954.**

**Cross References** — Duty of state board of education to adopt course of study to be used in state public schools, see § 37-1-3.

Powers and duties of state textbook purchasing board, see § 37-43-19.

### RESEARCH REFERENCES

**ALR.**

Validity of sex education programs in public schools. 82 A.L.R.3d 579.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 419, 420, 422.

## § 37-13-10. Public elementary schools to provide instruction in cursive reading and writing; exceptions.

The State Board of Education is authorized and directed to require all public school districts to meet the following elementary education curriculum standard: The standard course of study shall include the requirement that the public schools provide instruction in cursive reading and writing, implemented across the curriculum, so that students create readable documents through legible cursive handwriting by the end of the fifth grade, and that students pass with proficiency a teacher-constructed test demonstrating the students competency in both reading and writing cursive. This requirement shall be applicable beginning with the 2018-2019 school year. The provisions of this section shall not be applicable to the Mississippi School for the Blind and the Mississippi School for the Deaf.

**HISTORY: Laws, 2017, ch. 423, § 1, eff from and after July 1, 2017.**

**Editor's Notes** — A former § 37-13-10 [Laws, 1998, ch. 497, § 1; Laws, 2011, ch. 350, § 1; Laws, 2011, ch. 442, § 11, eff from and after July 1, 2011; Repealed by Laws of 2012, ch. 459, § 1, effective upon passage (approved April 23, 2012)] provided components of a reading sufficiency program of instruction to be implemented by the Board of Education.

## §§ 37-13-11 through 37-13-17. Repealed.

Repealed by Laws, 1982, Ex Sess, ch. 17, § 44, eff from and after July 1, 1984.

§ 37-13-11. [Codes, 1942, § 6216-02; Laws, 1953, Ex Sess, ch. 26, § 2; Laws, 1962, ch. 336; Laws. 1964, ch. 381, § 1].

§ 37-13-13. [Codes, 1942, § 6216-02; Laws, 1953, Ex Sess, ch. 26, § 2; Laws, 1962, ch. 336; Laws, 1964, ch. 381, § 1].

§ 37-13-15. [Codes, 1942, § 6216-21; Laws, 1958, ch. 294, §§ 1, 2].

§ 37-13-17. [Codes, 1942, § 6216-02; Laws, 1953, Ex Sess, ch. 26, § 2; Laws, 1962, ch. 336; Laws, 1964, ch. 381, § 1].

**Editor's Notes** — Former § 37-13-11 specified the required curriculum of grammar schools.

Former § 37-13-13 specified the required curriculum in high schools.

Former § 37-13-15 directed that history of Mississippi be taught in high schools.

Former § 37-13-17 provided that music and art could be taught in schools.

## § 37-13-19. Local school districts may allow course credit for completion of National Guard basic training to certain students.

In addition to the curriculum otherwise required by law or the State Board of Education to be taught in the public schools of this state, the school board of a local school district may allow course credit to any high school student, who is a member of the National Guard and attends basic training camp during the summer between the end of the student's junior year and the start of the student's senior year of academic instruction. At the conclusion of the student's basic training, the commanding officer of the National Guard unit of which the student is a reserve member shall provide evidence of the student's completion of training to the local school district where the student is in attendance. Upon receipt of the evidence provided by the National Guard, the school district may award one (1) Carnegie unit of elective credit to the student. This elective credit may be applied along with the total number of Carnegie units required for the student to graduate.

**HISTORY: Laws, 2012, ch. 344, § 1, eff from and after July 1, 2012.**

**Editor's Notes** — A former § 37-13-19 (Codes, 1942, § 6216-12; Laws, 1953, Ex Sess, ch. 26, § 12, repealed by Laws, 1982, Ex Sess, ch. 17, § 44, eff from and after July 1, 1984) provided for instruction in hygiene and physical education.

## § 37-13-20. Repealed.

Repealed by its own terms, effective July 1, 2011.

§ 37-13-20. [Laws, 2005, ch. 388, § 1; Laws, 2006, ch. 400, § 1, eff from and after June 30, 2006.]

**Editor's Notes** — Former § 37-13-20 established a pilot program to offer Italian language classes and was repealed by its own terms on July 1, 2011.

## § 37-13-21. Health education programs.

The State Board of Health and the various county health departments are hereby authorized and empowered to establish and provide for health education programs in the public school districts of this state and to employ county health educators for such purpose. In order to effectuate such programs the county superintendents of education of counties in which such programs have been established, with the approval of the county board of education, and the board of trustees of the municipal separate school districts are authorized and empowered, in their discretion, to cooperate and join with the said State Board of Health and the county health departments in such program. For such purposes the said county superintendents of education, with the approval of the county board of education, are hereby authorized and empowered to expend such funds as may be necessary from the common school funds of the county, and the board of trustees of municipal separate school districts are hereby authorized and empowered to expend such funds as may be necessary from the maintenance funds of such districts for the purpose of defraying the expenses of such cooperative health education programs. Those students whose parents or guardians shall make written application to the proper authorities on the ground that such program is inconsistent with the tenets and practices of the known religious organization with which they are affiliated shall not be required to participate in the program.

The State Board of Health and various county health departments shall have the power and authority to enter into such agreements and joint programs with the said county superintendents of education and boards of trustees of municipal separate school districts as may be necessary, proper and desirable in carrying out the purposes of this section, and in establishing and carrying on health education programs in the public school districts of this state, and the said county superintendents of education, with the approval and consent of the county board of education, and the board of trustees of municipal separate school districts shall have the power and authority to enter into such agreements and joint programs with each other and with the State Board of Health and county health departments as may be necessary for such purpose.

**HISTORY: Codes, 1942, § 6667.5; Laws, 1950, ch. 384, §§ 1, 2; Laws, 2013, ch. 497, § 58, eff from and after July 1, 2013.**

**Cross References —** State Board of Health generally, see § 41-3-1 et seq.
County department of health, see §§ 41-3-43, 41-3-45, 41-3-49 through 41-3-53.

## §§ 37-13-23 through 37-13-39. Repealed.

Repealed by Laws, 1982, Ex Sess, ch. 17, § 44, eff from and after July 1, 1984.

§§ 37-13-23 through 37-13-33. [Codes, 1942, §§ 6679-6684; Laws, 1934, ch. 255].

§ 37-13-35. [Codes, 1942, § 6684.5; Laws, 1950, ch. 370, §§ 1-4].

§ 37-13-37. [Codes, 1942, § 10265-03; Laws, 1966, ch. 540, § 3].

§ 37-13-39. [Codes, 1942, §§ 6685, 6686; Laws, 1938, ch. 166; Laws, 1970, ch. 387, § 1].

**Editor's Notes —** Former §§ 37-13-23 through 37-13-33 created the State temperance commission; directed the commission to prepare instructional material on debilitating effects of intoxicants; directed the utilization of such material in classrooms; directed that lectures on facts contained in the instructional material be held; provided for the printing and distribution of the material; and provided for an annual essay contest on effects of intoxicants.

Former § 37-13-35 provided that the state board of education require instruction on effects of alcohol.

Former § 37-13-37 provided that the state department of education require instruction on effects of intoxicating liquors.

Former § 37-13-39 provided that the director of division of instruction supervise the teaching of effects of alcohol, narcotics and drugs.

## § 37-13-41. Reports by school superintendents as to type and amount of work performed in each grade.

All principals and/or superintendents of public schools in all school districts in Mississippi shall report to their county superintendent of education upon forms prepared and sent to the county superintendent of education by the director of the division of instruction, giving the type and amount of work done in each grade of their respective school, with other information that may be desired by the director. The county superintendents of education shall compile this information on forms sent out by the director. This shall be made in duplicate, one (1) copy to be sent to the director, and the other filed as other public records are filed in the county superintendents' offices. This report shall be made to the director by the county superintendents of education not later than the first of June each year.

**HISTORY: Codes, 1942, § 6687; Laws, 1938, ch. 166; Laws, 2013, ch. 497, § 59, eff from and after July 1, 2013.**

## §§ 37-13-43 through 37-13-51. Repealed.

Repealed by Laws, 1978, ch. 325, § 1, eff from and after July 1, 1978.

§§ 37-13-43 through 37-13-51. [Laws 1973, ch. 453, §§ 1-5]

**Editor's Notes** — Former §§ 37-13-43 through 37-13-51 provided for the establishment of a drug education program in the public schools, the method of financing the program, and the training of drug education specialists. For present similar provisions pertaining to drug abuse education programs, see § 41-29-169.

## §§ 37-13-52 through 37-13-57. Repealed.

Repealed by Laws, 1982, Ex Sess, ch. 17, § 44, eff from and after July 1, 1984.

§§ 37-13-52 through 37-13-57. [Laws, 1976, ch. 362, §§ 1-6]

**Editor's Notes** — Former §§ 37-13-52 through 37-13-57 pertained to an economic education program.

## § 37-13-58. Career education; duties of department of education; office of career education.

(1) The state department of education is hereby designated as the state agency responsible for the administration and supervision of the career education concept as an educational innovation in the State of Mississippi. It is the intent of the legislature that all funds made available to the State of Mississippi, for the purpose of enhancing career education, be administered by the state department of education.

(2) Pursuant to the provisions of subsection (1) of this section, the state department of education is hereby authorized to establish an office of career education within the framework of the state department of education for the

purpose of developing standards, procedures and criteria for the administration and supervision of a statewide program of career education in grades one (1) through twelve (12). The state department of education, through the office of career education, shall assume the further responsibility for promoting a statewide effort designed to prepare local school faculties and staffs to incorporate the career education concept into their local educational programs.

**HISTORY: Laws, 1976, ch. 394, §§ 1, 2, eff from and after passage (approved April 29, 1976).**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.
State coordinator of career education, see § 37-13-59.
Implementation of career education program by school districts, see § 37-13-60.
Career information delivery system, see § 37-13-60.1.
Vocational education generally, see § 37-31-1 et seq.
Civilian vocational education generally, see § 37-33-1 et seq.
Adult education generally, see § 37-35-1 et seq.

### § 37-13-59. Career education; state coordinator; cooperation by state colleges and universities.

Pursuant to the provisions of Section 37-13-58, the state department of education is hereby authorized to provide for the services of a state coordinator of career education and such other professional and nonprofessional staff as may be needed and as funds available to the department will permit. It shall be the responsibility of the state coordinator of career education to coordinate efforts of the personnel of the state department of education, the state's colleges and universities, local public schools and other appropriate agencies to provide the services embraced by Sections 37-13-58 through 37-13-60. The state department of education and the state coordinator of career education will be responsible for the development of teacher education courses, both at the graduate and undergraduate levels, designed to familiarize teachers and prospective teachers with the career education concept and its application to their roles as teachers and prospective teachers. The state colleges and universities will consult and cooperate with the state department of education and state coordinator of career education in the development of these courses and in the responsibilities under Sections 37-13-58 through 37-13-60.

**HISTORY: Laws, 1976, ch. 394, § 3, eff from and after passage (approved April 29, 1976).**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.
Office of career education created, see § 37-13-58.
Implementation of career education program by school districts, see § 37-13-60.
Career information delivery system, see § 37-13-60.1.

### § 37-13-60. Career education; implementation of program by school districts; funding.

In addition to all other authority, duties and powers the governing boards of the several school districts of this state may now have, each is hereby authorized and empowered to adopt plans for the implementation of a career education program as the same best suits the needs thereof and thereby to orient its system to the field of work. In so doing, the governing board shall operate within its regular budget, without the employment of additional personnel and out of any available funds, federal, state, local or private.

Nothing in Sections 37-13-58 through 37-13-60 shall be so construed as to prohibit the acceptance of contributions from the private business sector or cooperation therewith, including but not limited to seminars, tours, lectures and in-service training.

There will be cooperation between the state department of education, the state coordinator of career education and the governing boards of the several school districts in implementing this program as it best suits the needs of the individual districts.

Provided, further, the commission on school accreditation shall encourage the development of plans of career education and the implementation thereof, and shall be authorized to accredit same.

**HISTORY: Laws, 1976, ch. 394, § 4, eff from and after passage (approved April 29, 1976).**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.
Office of career education created, see § 37-13-58.
State coordinator of career education, see § 37-13-59.
Career information delivery system, see § 37-13-60.1.
Commission on school accreditation, see § 37-17-1 et seq.

## § 37-13-60.1. Career information delivery system.

(1) The Mississippi State Occupational Information Coordinating Committee, hereinafter "SOICC," is hereby designated as the entity responsible for the operation and management of an occupational information system to support career development in elementary schools, middle/junior high schools, high schools, postsecondary institutions and human service agencies pursuant to the Carl D. Perkins Vocational Education Act of 1984, Public Law 98-524, Section 422(b).

(2) SOICC shall develop and incorporate Mississippi-specific occupational and educational information to implement a career information delivery system for this state.

(3) SOICC shall train local staff in the use and operation of the career information delivery system in the career development process.

(4) SOICC shall establish the criteria pursuant to which appropriated funds will be distributed to local users of the career information delivery system.

(5) On or before January 1 of each year, SOICC shall report to the Senate Education Committee and the House Education Committee of the Mississippi Legislature its assessment of the effectiveness and usefulness of the career information delivery system in the advancement of career development for state public school students.

(6) SOICC is authorized to impose reasonable fees on users of the career information delivery system in order to defray a portion of the expense incurred in the operation and management of the career information delivery system.

**HISTORY: Laws, 1989, ch. 400, § 1, eff from and after passage (approved March 14, 1989).**

**Cross References** — Office of career education created, see § 37-13-58.
State coordinator of career education, see § 37-13-59.
Implementation of career education program by school districts, see § 37-13-60.
**Federal Aspects**— Carl C. Perkins Vocational Education Act of 1984, see 20 USCS §§ 2301 et seq.

## SCHOOL YEAR AND ATTENDANCE

| Sec. | |
|---|---|
| 37-13-61. | Date of opening and closing of school term; length of school term. |
| 37-13-62. | Repealed. |
| 37-13-63. | Minimum length of school term. |
| 37-13-64. | Exemption from minimum school term length requirement for certain schools under certain circumstances. |
| 37-13-65. | Closing of schools for holidays and emergencies. |
| 37-13-67. | Length of school day. |
| 37-13-69. | Observance of legal holidays. |

### § 37-13-61. Date of opening and closing of school term; length of school term.

The local school board shall have the power and authority to fix the date for the opening and closing of the school term, subject to the minimum number of days which schools must be in session during a scholastic year, as prescribed under Section 37-13-63. However, local school boards are authorized to keep school in session in excess of the minimum number of days prescribed in Section 37-13-63.

**HISTORY: Codes, 1942, §§ 6274-09, 6411-12; Laws, 1953, Ex Sess, ch. 16, § 9; ch. 23, § 12; Laws, 1981, ch. 499, § 9; Laws, 1986, ch. 492, § 85; Laws, 2006, ch. 417, § 10; reenacted without change, Laws, 2009, ch. 345, § 11; brought forward without change, Laws, 2011, ch. 313, § 4, eff from and after passage (approved Feb. 24, 2011).**

**Editor's Notes** — Laws of 1990, Chapter 589, § 38, amended this section effective July 1, 1990, provided that the Legislature, by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declare that sufficient funds were dedicated and made available for the implementation of Chapter 589. However, funds were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions were not implemented. The text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

RESEARCH REFERENCES

**ALR.**

What constitutes a private, parochial, or denominational school within statute making attendance at such school a compliance with compulsory school attendance law. 65 A.L.R.3d 1222.

**CJS.**

78A C.J.S., Schools and School Districts § 1066.

**Practice References.**

Education Law (Matthew Bender).

## § 37-13-62. Repealed.

Repealed by Laws of 2014, ch. 442, § 9, effective March 26, 2014.
§ 37-13-62. [Laws, 2012, ch. 511, § 1, eff from and after July 1, 2012.]

**Editor's Notes** — Former § 37-13-62 required that all public schools begin the school year on or after the third Monday in August.

## § 37-13-63. Minimum length of school term.

(1) Except as otherwise provided, all public schools in the state shall be kept in session for at least one hundred eighty (180) days in each scholastic year.

(2) If the school board of any school district shall determine that it is not economically feasible or practicable to operate any school within the district for the full one hundred eighty (180) days required for a scholastic year as contemplated due to an enemy attack, a man-made, technological or natural disaster or extreme weather emergency in which the Governor has declared a disaster or state of emergency under the laws of this state or the President of the United States has declared an emergency or major disaster to exist in this state, the school board may notify the State Department of Education of the disaster or weather emergency and submit a plan for altering the school term. If the State Board of Education finds the disaster or extreme weather emergency to be the cause of the school not operating for the contemplated school term and that such school was in a school district covered by the Governor's or President's disaster or state of emergency declaration, it may permit that school board to operate the schools in its district for less than one hundred eighty (180) days; however, in no instance of a declared disaster or state of emergency under the provisions of this subsection shall a school board receive payment from the State Department of Education for per pupil expenditure for pupils in average daily attendance in excess of ten (10) days.

**HISTORY: Codes, 1942, §§ 6274-10, 6411-12; Laws, 1953, Ex Sess, ch. 16, § 10; ch. 23, § 12; Laws, 1986, ch. 492, § 86; Laws, 1992, ch. 524, § 7; Laws, 2003, ch. 544, § 1; Laws, 2011, ch. 313, § 2, eff from and after passage (approved Feb. 24, 2011).**

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Exemption from minimum school term length requirement for certain schools under certain circumstances, see § 37-13-64.

Applicability of provisions of this section to charter schools, see § 37-28-15.

Period of time during which school may be closed pursuant to governor's order not being deducted from time schools are required to be operated during scholastic year, see § 37-65-19.

Period of time during which school may be closed pursuant to order of district board of trustees not being deducted from time schools are required to be operated during scholastic year, see § 37-65-117.

### RESEARCH REFERENCES

**CJS.**

78A C.J.S., Schools and School Districts § 1066.

## § 37-13-64. Exemption from minimum school term length requirement for certain schools under certain circumstances.

(1) Beginning with the 2010-2011 school term, any school district required to close the operation of its schools by decision of the superintendent, under the authority provided by the local school board, due to extreme weather conditions, in the best interests of the health and safety of the students, administration and staff of the school district, shall be exempt from the requirement that schools be kept in session a minimum of one hundred eighty (180) days. Any school district that closes its schools for reasons authorized under this section shall receive payment from the State Department of Education for per pupil expenditure for pupils in average daily attendance not to exceed ten (10) days.

(2) In the event weather conditions are cause for the closure of operations of schools in any local school district in any instance in which a state of emergency has not been declared pursuant to Section 37-151-7(3)(c), the State Board of Education may consider, on a case-by-case basis, requests submitted by local school districts to alter the school calendar consistent with the provision of that section.

**HISTORY: Laws, 2011, ch. 313, § 1, eff from and after passage (approved Feb. 24, 2011).**

## § 37-13-65. Closing of schools for holidays and emergencies.

Upon application from the school board, the superintendent of schools may close any school because of an epidemic prevailing in the school district or because of the death, resignation, sickness or dismissal of a teacher or teachers or because of any other emergency necessitating the closing of the school. However, all such schools so closed shall operate for the required full time after being reopened during the scholastic year, unless the school board of the local school district submits a plan to alter the school term that is approved by the State Board of Education under the authority of Section 37-13-63(2).

**HISTORY: Codes, 1942, §§ 6274-11, 6411-12; Laws, 1953, Ex Sess, ch. 16, § 11;**

**ch. 23, § 12; Laws, 1981, ch. 499, § 10; Laws, 1986, ch. 492, § 87; Laws, 2011, ch. 313, § 3, eff from and after passage (approved Feb. 24, 2011).**

### RESEARCH REFERENCES

**CJS.**
78A C.J.S., Schools and School Districts § 1066.

## § 37-13-67. Length of school day.

The number of hours of actual teaching which shall constitute a school day shall be determined and fixed by the board of trustees of the school district at not less than five and one-half (5-½) hours.

**HISTORY: Codes, 1942, § 6274-12; Laws, 1953, Ex Sess, ch. 16, § 12; Laws, 2006, ch. 417, § 11; reenacted without change, Laws, 2009, ch. 345, § 12; Laws, 2014, ch. 442, § 1, eff from and after passage (approved March 26, 2014).**

### RESEARCH REFERENCES

**CJS.**
78A C.J.S., Schools and School Districts § 1066.

## § 37-13-69. Observance of legal holidays.

All public schools of this state may observe such legal holidays as may be designated by the local school board, and no sessions of school shall be held on holidays so designated and observed. However, all schools shall operate for the full minimum term required by law exclusive of the holidays authorized by this section. The holidays thus observed shall not be deducted from the reports of the superintendents, principals and teachers, and such superintendents, principals and teachers shall be allowed pay for full time as though they had taught on those holidays. However, such holidays shall not be counted or included in any way in determining the average daily attendance of the school.

**HISTORY: Codes, 1942, § 6216-09; Laws, 1953, Ex Sess, ch. 26, § 9; Laws, 2006, ch. 417, § 12; reenacted without change, Laws, 2009, ch. 345, § 13, eff from and after June 30, 2009.**

**Cross References —** Legal holidays generally, see § 3-3-7.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 156, 157.

**CJS.**
78A C.J.S., Schools and School Districts § 1042.

## MISSISSIPPI COMPULSORY SCHOOL ATTENDANCE LAW

Sec.
37-13-80. Office of Dropout Prevention created; qualifications and responsibilities of director; date for implementation of dropout prevention program; local school district responsibilities; dropout prevention plan to address student transition to home school districts; legislative intent.
37-13-80.1. Middle school dropout prevention and recovery pilot program; minimum necessary requirements of pilot program; development and implementation of alternative student performance accountability method to evaluate pilot program school districts.
37-13-81. Office of Compulsory School Attendance Enforcement; creation.
37-13-83. Director; qualifications; responsibilities.
37-13-85. Powers and duties.
37-13-87. District office supervisors; powers and duties; qualifications; salaries.
37-13-89. School attendance officers; qualifications; duties; salaries.
37-13-90. Repealed.
37-13-91. Compulsory school attendance requirements generally; enforcement of law.
37-13-92. Alternative school program for compulsory-school-age students; placement of children in alternative school; transportation of students; expenses; annual report.
37-13-93 through 37-13-105. Repealed.
37-13-107. Training and education course for school attendance officers; effect of failure to receive certificate.

### § 37-13-80. Office of Dropout Prevention created; qualifications and responsibilities of director; date for implementation of dropout prevention program; local school district responsibilities; dropout prevention plan to address student transition to home school districts; legislative intent.

(1) There is created the Office of Dropout Prevention within the State Department of Education. The office shall be responsible for the administration of a statewide dropout prevention program.

(2) The State Superintendent of Public Education shall appoint a director for the Office of Dropout Prevention, who shall meet all qualifications established by the State Superintendent of Public Education and the State Personnel Board. The director shall be responsible for the proper administration of the Office of Dropout Prevention and any other regulations or policies that may be adopted by the State Board of Education. However, if for any reason within the two-year period beginning July 1, 2014, a new director for the Office of Dropout Prevention is employed by the department, the employment of such individual shall not be subject to the rules and regulations of the State Personnel Board, except as otherwise provided in Section 25-9-127(4).

(3) Each school district shall implement a dropout prevention program approved by the Office of Dropout Prevention of the State Department of Education by the 2012-2013, and annually thereafter, school year.

(4) Each local school district will be held responsible for reducing and/or eliminating dropouts in the district. The local school district will be responsible for the implementation of dropout plans focusing on issues such as, but not limited to:

(a) Dropout Prevention initiatives that focus on the needs of individual local education agencies;

(b) Establishing policies and procedures that meet the needs of the districts;

(c) Focusing on the student-centered goals and objectives that are measureable;

(d) Strong emphasis on reducing the retention rates in grades kindergarten, first and second;

(e) Targeting subgroups that need additional assistance to meet graduation requirements; and

(f) Dropout recovery initiatives that focus on students age seventeen (17) through twenty-one (21), who dropped out of school.

(5) The Office of Dropout Prevention may provide technical assistance upon written request by the local school district. The Office of Dropout Prevention will collaborate with program offices within the Mississippi Department of Education to develop and implement policies and initiatives to reduce the state's dropout rate.

(6) Each school district's dropout prevention plan shall address how students will transition to the home school district from the juvenile detention centers.

(7) It is the intent of the Legislature that, through the statewide dropout prevention program and the dropout prevention programs implemented by each school district, the graduation rate for cohort classes will be increased to not less than eighty-five percent (85%) by the 2018-2019 school year. The Office of Dropout Prevention shall establish graduation rate benchmarks for each two-year period from the 2008-2009 school year through the 2018-2019 school year, which shall serve as guidelines for increasing the graduation rate for cohort classes on a systematic basis to eighty-five percent (85%) by the 2018-2019 school year.

**HISTORY: Laws, 2006, ch. 504, § 6; Laws, 2007, ch. 568, § 3; reenacted without change, Laws, 2009, ch. 345, § 14; Laws, 2011, ch. 442, § 12; Laws, 2012, ch. 461, § 1; Laws, 2014, ch. 491, § 6, eff from and after passage (approved April 15, 2014).**

**Editor's Notes —** Laws of 2006, ch. 504, § 1(1), codified as § 37-161-1(1) provides as follows:

"SECTION 1. (1) This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Cross References —** State Personnel Board generally, see § 25-9-101 et seq.

State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

State superintendent of public education, see § 37-3-9, 37-3-11.

### § 37-13-80.1. Middle school dropout prevention and recovery pilot program; minimum necessary requirements of pilot program; development and implementation of alternative student performance accountability method to evaluate pilot program school districts.

(1) The State Board of Education shall implement a Middle School Dropout Prevention and Recovery Pilot Program in select "D" and "F" rated school districts selected by the State Board of Education. The purpose of the pilot program is to reengage students and increase the graduation rates in Mississippi through an educational program that provides vocational technology, flexible scheduling and a blended learning environment with individualized and self-paced learning options.

(2) Under the pilot program, the educational services and programming shall be provided by an education partner that is a nonprofit or for-profit entity approved by the State Board of Education. The local school board of the districts selected to participate in the pilot program shall be responsible for reporting enrollment to the State Department of Education, working with the education partner to align graduation requirements. The participating schools district shall be accredited by the Southern Association of Colleges and Schools as an indicator of quality instructional programming.

(3) The pilot program shall provide at least the following:

(a) Facilities that are easily accessible to the students being served;

(b) Flexible scheduling, including at least two (2) different program schedules;

(c) Differentiated instruction that shall include individualized, group and online instructional components;

(d) The capacity for assessing, recording and responding to the students' academic progress on a daily basis using assessments that are aligned with state and local standards and requirements;

(e) A focus on serving a defined population of at-risk students who have dropped out or are likely to drop out of school in the foreseeable future without some type of intervention;

(f) Support services, including social workers and crisis intervention professionals who are trained to assist students in removing barriers to attending school and graduating;

(g) Vocational technology and other instructional models that are self-paced and mastery-based; and

(h) Individualized graduation plans to guide students to graduation with a standard high school diploma.

(4) Before the State Board of Education approves an applicant as an education partner, the applicant must demonstrate the following:

(a) A history providing dropout recovery services to high school students in public schools;

(b) At least two (2) years of relevant experience operating and providing services to brick-and-mortar public schools;

(c) At least two (2) years of relevant experience providing comprehensive online learning or vocational technology programs;

(d) Relevant experience serving diverse student populations, including socioeconomically disadvantaged students;

(e) An explanation of the steps taken by the applicant to ensure that its proposed instructional content is aligned with state standards;

(f) A plan for the recruitment and hiring of state-certified teachers, including hiring criteria;

(g) A plan for the recruitment and hiring of qualified administrators, including hiring criteria;

(h) A detailed description of the applicant's plan to work with the participating local school districts and the State Board of Education to identify students who need to be served, to reengage those students, and to provide alternative education options for students at risk of dropping out. Students at risk of dropping out from their current schools may be transferred into the pilot program; and

(i) An operational plan that includes the following:

(i) The number and physical location of proposed sites and a list of the equipment required;

(ii) A proposed program calendar and daily schedule and an explanation of how the calendar and schedule meet the needs of prospective students. The schedule must include at least four (4) hours per school day of on-site learning at a physical location;

(iii) The student-to-teacher ratio;

(iv) A description of each of the instructional methods to be used and number of hours per day for each method;

(v) A plan for differentiated instruction that must include individualized, group, and online instructional components;

(vi) Capacity for assessing, recording, and responding to students' academic progress on a daily basis using standard assessments;

(vii) A detailed one-year budget;

(viii) A system of competency-based credit; and

(ix) A plan for aggregation and reporting of student performance data and reporting of financial activity.

(5)(a) The State Board of Education shall develop and implement an alternative student performance accountability method to evaluate the performance and effectiveness of pilot program school districts that solely provide dropout prevention services and dropout recovery programs to at-risk students who have dropped out of or are likely to drop out of their base high school. Data and student results collected and compiled from the pilot program districts shall inform the State Board of Education in developing an alternative accountability method to apply statewide and in evaluating the success of the pilot program as a whole.

(b) The alternative accountability method shall only measure academic growth of students who have been continuously enrolled for a period of one hundred twenty (120) days. Students shall be assessed by pre-testing and post-testing at the beginning and end of the one hundred twenty-day enrollment period to measure student growth and shall apply beginning with the 2014-2015 school year.

**HISTORY: Laws, 2014, ch. 536, § 4, eff from and after July 1, 2014.**

## § 37-13-81. Office of Compulsory School Attendance Enforcement; creation.

There is created the Office of Compulsory School Attendance Enforcement within the Office of Dropout Prevention of the State Department of Education. The office shall be responsible for the administration of a statewide system of enforcement of the Mississippi Compulsory School Attendance Law (Section 37-13-91) and for the supervision of school attendance officers throughout the state.

**HISTORY: Laws, 1998, ch. 566, § 1; reenacted without change, Laws, 2002, ch. 610, § 1; reenacted without change, Laws, 2004, ch. 552, § 1; Laws, 2006, ch. 504, § 7; reenacted without change, Laws, 2009, ch. 345, § 15, eff from and after June 30, 2009.**

**Editor's Notes —** Laws of 2006, ch. 504, § 1(1), codified as § 37-161-1(1), provides as follows:

"SECTION 1. (1) This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

Section 37-13-90, which provided for the repeal of this section effective July 1, 2009, was repealed by Laws of 2009, ch. 345, § 37, effective June 30, 2009.

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Office of compulsory school attendance enforcement created, see § 37-13-81.

Qualifications and duties of school attendance officers, see § 37-13-89.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

## § 37-13-83. Director; qualifications; responsibilities.

The State Superintendent of Public Education shall appoint a director for the Office of Compulsory School Attendance Enforcement, who shall meet all qualifications established for school attendance officer supervisors and any additional qualifications that may be established by the State Superintendent of Public Education or State Personnel Board. The director shall be responsible for the proper administration of the Office of Compulsory School Attendance Enforcement in conformity with the Mississippi Compulsory School Attendance Law and any other regulations or policies that may be adopted by the State Board of Education. The director shall report directly to the Director of the Office of Dropout Prevention.

**HISTORY: Laws, 1998, ch. 566, § 2; reenacted without change, Laws, 2002, ch. 610, § 2; reenacted without change, Laws, 2004, ch. 552, § 2; Laws, 2006, ch. 504, § 8; reenacted without change, Laws, 2009, ch. 345, § 16, eff from and after June 30, 2009.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The subsection number "(1)" that appeared at the beginning of the section was deleted (the section contained a (1), but not a (2)). The Joint Committee ratified the correction at its April 28, 1999 meeting.

**Editor's Notes —** Laws of 2006, ch. 504, § 1(1), codified as § 37-161-1(1), provides as follows:

"SECTION 1. (1) This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

Section 37-13-90, which provided for the repeal of this section effective July 1, 2009, was repealed by Laws of 2009, ch. 345, § 37, effective June 30, 2009.

**Cross References —** State Personnel Board generally, see § 25-9-101 et seq.

State Board of Education generally, see § 37-1-1 et seq.

State superintendent of public education, see § 37-3-9, 37-3-11.

Office of Dropout Prevention, see § 37-13-80.

Office of compulsory school attendance enforcement created, see § 37-13-81.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

## § 37-13-85. Powers and duties.

The Office of Compulsory School Attendance Enforcement shall have the following powers and duties, in addition to all others imposed or granted by law:

(a) To establish any policies or guidelines concerning the employment of school attendance officers which serve to effectuate a uniform system of enforcement under the Mississippi Compulsory School Attendance Law throughout the state, and to designate the number of school attendance officers which shall be employed to serve in each school district area;

(b) To supervise and assist school attendance officer supervisors in the performance of their duties;

(c) To establish minimum standards for enrollment and attendance for the state and each individual school district, and to monitor the success of the state and districts in achieving the required levels of performance;

(d) To provide to school districts failing to meet the established standards for enrollment and attendance assistance in reducing absenteeism or the dropout rates in those districts;

(e) To establish any qualifications, in addition to those required under Section 37-13-89, for school attendance officers as the office deems necessary to further the purposes of the Mississippi Compulsory School Attendance Law;

(f) To develop and implement a system under which school districts are required to maintain accurate records that document enrollment and attendance in such a manner that the records reflect all changes in enrollment and attendance, and to require school attendance officers to submit information concerning public school attendance on a monthly basis to the office;

(g) To prepare the form of the certificate of enrollment required under the Mississippi Compulsory School Attendance Law and to furnish a sufficient number of the certificates of enrollment to each school attendance officer in the state;

(h) To provide to the State Board of Education statistical information concerning absenteeism, dropouts and other attendance-related problems as requested by the State Board of Education;

(i) To provide for the certification of school attendance officers;

(j) To provide for a course of training and education for school attendance officers, and to require successful completion of the course as a prerequisite to certification by the office as school attendance officers;

(k) To adopt any guidelines or policies the office deems necessary to effectuate an orderly transition from the supervision of school attendance officers by district attorneys to the supervision by the school attendance officer supervisors;

(*l*) Beginning on July 1, 1998, to require school attendance officer supervisors to employ persons employed by district attorneys before July 1, 1998, as school attendance officers without requiring such persons to submit an application or interview for employment with the State Department of Education;

(m) To adopt policies or guidelines linking the duties of school attendance officers to the appropriate courts, law enforcement agencies and community service providers; and

(n) To adopt any other policies or guidelines that the office deems necessary for the enforcement of the Mississippi Compulsory School Attendance Law; however, the policies or guidelines shall not add to or contradict with the requirements of Section 37-13-91.

**HISTORY: Laws, 1998, ch. 566, § 3; reenacted without change, Laws, 2002, ch. 610, § 3; reenacted without change, Laws, 2004, ch. 552, § 3; reenacted without change, Laws, 2009, ch. 345, § 17; Laws, 2010, ch. 421, § 1; Laws, 2011, ch. 442, § 13, eff from and after July 1, 2011.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.
State Department of Education generally, see § 37-31-1 et seq.
Qualifications and duties of school attendance officers, see § 37-13-89.
Mississippi compulsory school attendance law, see § 37-13-91.

## § 37-13-87. District office supervisors; powers and duties; qualifications; salaries.

(1) The Director of the Office of Compulsory School Attendance Enforcement shall employ three (3) school attendance officer supervisors, each to maintain an office within a different Supreme Court district. Each supervisor shall be responsible for the enforcement of the Mississippi Compulsory School Attendance Law within his district and shall exercise direct supervision over the school attendance officers in the district. The supervisors, who shall report to the director of the office, shall assist the school attendance officers in the performance of their duties as established by law or otherwise.

(2) No person having less than eight (8) years combined actual experience as a school attendance officer, school teacher, school administrator, law

enforcement officer possessing a college degree with a major in a behavioral science or a related field, and/or social worker in the state shall be employed as a school attendance officer supervisor. Further, a school attendance officer supervisor shall possess a college degree with a major in a behavioral science or a related field or shall have actual experience as a school teacher, school administrator, law enforcement officer possessing such degree or social worker; however, these requirements shall not apply to persons employed as school attendance officers before January 1, 1987. School attendance officers shall meet any additional qualifications established by the State Personnel Board for school attendance officers or school attendance officer supervisors. The school attendance officer supervisors shall receive an annual salary to be set by the State Superintendent of Public Education, subject to the approval of the State Personnel Board.

**HISTORY: Laws, 1998, ch. 566, § 4; reenacted without change, Laws, 2002, ch. 610, § 4; reenacted without change, Laws, 2004, ch. 552, § 4; reenacted without change, Laws, 2009, ch. 345, § 18, eff from and after June 30, 2009.**

**Cross References —** State Personnel Board generally, see § 25-9-101 et seq.

Qualifications and responsibilities of director of office of compulsory school attendance enforcement, see § 37-13-83.

Qualifications and duties of school attendance officers, see § 37-13-89.

Mississippi compulsory school attendance law, see § 37-13-91.

## § 37-13-89. School attendance officers; qualifications; duties; salaries.

(1) In each school district within the state, there shall be employed the number of school attendance officers determined by the Office of Compulsory School Attendance Enforcement to be necessary to adequately enforce the provisions of the Mississippi Compulsory School Attendance Law; however, this number shall not exceed one hundred fifty-three (153) school attendance officers at any time. From and after July 1, 1998, all school attendance officers employed pursuant to this section shall be employees of the State Department of Education. The State Department of Education shall employ all persons employed as school attendance officers by district attorneys before July 1, 1998, and shall assign them to school attendance responsibilities in the school district in which they were employed before July 1, 1998. The first twelve (12) months of employment for each school attendance officer shall be the probationary period of state service.

(2)(a) The State Department of Education shall obtain current criminal records background checks and current child abuse registry checks on all persons applying for the position of school attendance officer after July 2, 2002. The criminal records information and registry checks must be kept on file for any new hires. In order to determine an applicant's suitability for employment as a school attendance officer, the applicant must be fingerprinted. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal

Bureau of Investigation (FBI) for a national criminal history record check. The applicant shall pay the fee, not to exceed Fifty Dollars ($50.00), for the fingerprinting and criminal records background check; however, the State Department of Education, in its discretion, may pay the fee for the fingerprinting and criminal records background check on behalf of any applicant. Under no circumstances may a member of the State Board of Education, employee of the State Department of Education or any person other than the subject of the criminal records background check disseminate information received through any such checks except insofar as required to fulfill the purposes of this subsection.

(b) If the fingerprinting or criminal records check discloses a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the applicant is not eligible to be employed as a school attendance officer. Any employment of an applicant pending the results of the fingerprinting and criminal records check is voidable if the new hire receives a disqualifying criminal records check. However, the State Board of Education, in its discretion, may allow an applicant aggrieved by an employment decision under this subsection to appear before the board, or before a hearing officer designated for that purpose, to show mitigating circumstances that may exist and allow the new hire to be employed as a school attendance officer. The State Board of Education may grant waivers for mitigating circumstances, which may include, but are not necessarily limited to: (i) age at which the crime was committed; (ii) circumstances surrounding the crime; (iii) length of time since the conviction and criminal history since the conviction; (iv) work history; (v) current employment and character references; and (vi) other evidence demonstrating the ability of the person to perform the responsibilities of a school attendance officer competently and that the person does not pose a threat to the health or safety of children.

(c) A member of the State Board of Education or employee of the State Department of Education may not be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this section.

(3) Each school attendance officer shall possess a college degree with a major in a behavioral science or a related field or shall have no less than three (3) years combined actual experience as a school teacher, school administrator, law enforcement officer possessing such degree, and/or social worker; however, these requirements shall not apply to persons employed as school attendance officers before January 1, 1987. School attendance officers also shall satisfy any additional requirements that may be established by the State Personnel Board for the position of school attendance officer.

(4) It shall be the duty of each school attendance officer to:

(a) Cooperate with any public agency to locate and identify all compulsory-school-age children who are not attending school;

(b) Cooperate with all courts of competent jurisdiction;

(c) Investigate all cases of nonattendance and unlawful absences by compulsory-school-age children not enrolled in a nonpublic school;

(d) Provide appropriate counseling to encourage all school-age children to attend school until they have completed high school;

(e) Attempt to secure the provision of social or welfare services that may be required to enable any child to attend school;

(f) Contact the home or place of residence of a compulsory-school-age child and any other place in which the officer is likely to find any compulsory-school-age child when the child is absent from school during school hours without a valid written excuse from school officials, and when the child is found, the officer shall notify the parents and school officials as to where the child was physically located;

(g) Contact promptly the home of each compulsory-school-age child in the school district within the officer's jurisdiction who is not enrolled in school or is not in attendance at public school and is without a valid written excuse from school officials; if no valid reason is found for the nonenrollment or absence from the school, the school attendance officer shall give written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance;

(h) Collect and maintain information concerning absenteeism, dropouts and other attendance-related problems, as may be required by law or the Office of Compulsory School Attendance Enforcement; and

(i) Perform all other duties relating to compulsory school attendance established by the State Department of Education or district school attendance supervisor, or both.

(5) While engaged in the performance of his duties, each school attendance officer shall carry on his person a badge identifying him as a school attendance officer under the Office of Compulsory School Attendance Enforcement of the State Department of Education and an identification card designed by the State Superintendent of Public Education and issued by the school attendance officer supervisor. Neither the badge nor the identification card shall bear the name of any elected public official.

(6) The State Personnel Board shall develop a salary scale for school attendance officers as part of the variable compensation plan. The various pay ranges of the salary scale shall be based upon factors including, but not limited to, education, professional certification and licensure, and number of years of experience. School attendance officers shall be paid in accordance with this salary scale. The minimum salaries under the scale shall be no less than the following:

(a) For school attendance officers holding a bachelor's degree or any other attendance officer who does not hold such a degree, the annual salary shall be based on years of experience as a school attendance officer or related field of service or employment, no less than as follows:

| Years of Experience | Salary |
|---|---|
| 0-4 years | $19,650.00 |

| Years of Experience | Salary |
|---|---|
| 5-8 years | 21,550.00 |
| 9-12 years | 23,070.00 |
| 13-16 years | 24,590.00 |
| Over 17 years | 26,110.00 |

(b) For school attendance officers holding a license as a social worker, the annual salary shall be based on years of experience as a school attendance officer or related field of service or employment, no less than as follows:

| Years of Experience | Salary |
|---|---|
| 0-4 years | $20,650.00 |
| 5-8 years | 22,950.00 |
| 9-12 years | 24,790.00 |
| 13-16 years | 26,630.00 |
| 17-20 years | 28,470.00 |
| Over 21 years | 30,310.00 |

(c) For school attendance officers holding a master's degree in a behavioral science or a related field, the annual salary shall be based on years of experience as a school attendance officer or related field of service or employment, no less than as follows:

| Years of Experience | Salary |
|---|---|
| 0-4 years | $21,450.00 |
| 5-8 years | 24,000.00 |
| 9-12 years | 26,040.00 |
| 13-16 years | 28,080.00 |
| 17-20 years | 30,120.00 |
| Over 21 years | 32,160.00 |

(7)(a) Each school attendance officer employed by a district attorney on June 30, 1998, who became an employee of the State Department of Education on July 1, 1998, shall be awarded credit for personal leave and major medical leave for his continuous service as a school attendance officer under the district attorney, and if applicable, the youth or family court or a state agency. The credit for personal leave shall be in an amount equal to one-third (⅓) of the maximum personal leave the school attendance officer could have accumulated had he been credited with such leave under Section 25-3-93 during his employment with the district attorney, and if applicable, the youth or family court or a state agency. The credit for major medical leave shall be in an amount equal to one-half (½) of the maximum major medical leave the school attendance officer could have accumulated had he been credited with such leave under Section 25-3-95 during his employment with the district attorney, and if applicable, the youth or family court or a state agency. However, if a district attorney who employed a school attendance officer on June 30, 1998, certifies, in writing, to the State Department of Education that the school attendance officer had accumulated, pursuant to a personal leave policy or major medical leave policy lawfully adopted by the district attorney, a number of days of unused personal leave or major medical leave, or both, which is greater than the number of days to which the school attendance officer is entitled under this paragraph, the State Department of Education shall authorize the school attendance officer to retain the actual unused personal leave or major medical leave, or both, certified by the district attorney, subject to the maximum amount of personal leave and major medical leave the school attendance officer could have accumulated had he been credited with such leave under Sections 25-3-93 and 25-3-95.

(b) For the purpose of determining the accrual rate for personal leave under Section 25-3-93 and major medical leave under Section 25-3-95, the State Department of Education shall give consideration to all continuous service rendered by a school attendance officer before July 1, 1998, in addition to the service rendered by the school attendance officer as an employee of the department.

(c) In order for a school attendance officer to be awarded credit for personal leave and major medical leave or to retain the actual unused personal leave and major medical leave accumulated by him before July 1, 1998, the district attorney who employed the school attendance officer must certify, in writing, to the State Department of Education the hire date of the school attendance officer. For each school attendance officer employed by the youth or family court or a state agency before being designated an employee of the district attorney who has not had a break in continuous service, the hire date shall be the date that the school attendance officer was hired by the youth or family court or state agency. The department shall prescribe the date by which the certification must be received by the department and shall provide written notice to all district attorneys of the certification requirement and the date by which the certification must be received.

(8)(a) School attendance officers shall maintain regular office hours on a year-round basis; however, during the school term, on those days that teachers in all of the school districts served by a school attendance officer are not required to report to work, the school attendance officer also shall not be required to report to work. (For purposes of this subsection, a school district's school term is that period of time identified as the school term in contracts entered into by the district with licensed personnel.) A school attendance officer shall be required to report to work on any day recognized as an official state holiday if teachers in any school district served by that school attendance officer are required to report to work on that day, regardless of the school attendance officer's status as an employee of the State Department of Education, and compensatory leave may not be awarded to the school attendance officer for working during that day. However, a school attendance officer may be allowed by the school attendance officer's supervisor to use earned leave on such days.

(b) The State Department of Education annually shall designate a period of six (6) consecutive weeks in the summer between school years during which school attendance officers shall not be required to report to work. A school attendance officer who elects to work at any time during that period may not be awarded compensatory leave for such work and may not opt to be absent from work at any time other than during the six (6) weeks designated by the department unless the school attendance officer uses personal leave or major medical leave accrued under Section 25-3-93 or 25-3-95 for such absence.

(9) The State Department of Education shall provide all continuing education and training courses that school attendance officers are required to complete under state law or rules and regulations of the department.

**HISTORY: Laws, 1998, ch. 566, § 5; Laws, 1999, ch. 529, § 1; reenacted and amended, Laws, 2002, ch. 576, § 1; reenacted without change, Laws, 2002, ch. 610, § 5; reenacted without change, Laws, 2004, ch. 552, § 5; reenacted without change, Laws, 2009, ch. 345, § 19; Laws, 2014, ch. 491, § 8, eff from and after passage (approved April 15, 2014).**

**Joint Legislative Committee Note —** Section 1 of ch. 576, Laws of 2002, effective from and after July 2, 2002 (approved April 11, 2002), amended this section. Section 5 of ch. 610, Laws of 2002, effective from and after July 1, 2002 (approved April 25, 2002), also amended this section. As set out above, this section reflects the language of Section 5 of ch. 610, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subdivision (2)(b). The reference to "Section 45-33-23(g)" was changed to "Section 45-33-23(h)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

**Cross References —** State Personnel Board generally, see § 25-9-101 et seq.
State Board of Education generally, see § 37-1-1 et seq.
State Department of Education generally, see § 37-3-1 et seq.
State superintendent of public education generally, see §§ 37-3-9, 37-3-11.
Office of compulsory school attendance enforcement, see § 37-13-81.
Mississippi Compulsory School Attendance Law see § 37-13-91.
Training and education course for school attendance officers, see § 37-13-107.
Department of Public Safety generally, see § 45-1-1 et seq.

## § 37-13-90. Repealed.

Repealed by Laws, 2009, ch. 345, s. 37, effective June 30, 2009.

§ 37-13-90. [Laws, 2002, ch. 610, § 7; Laws, 2004, ch. 552, § 6, eff from and after July 1, 2004.]

**Editor's Notes —** Former 37-13-90 provided for the repeal of §§ 37-13-81 through 37-13-90, effective July 1, 2009.

## § 37-13-91. Compulsory school attendance requirements generally; enforcement of law.

(1) This section shall be referred to as the "Mississippi Compulsory School Attendance Law."

(2) The following terms as used in this section are defined as follows:

(a) "Parent" means the father or mother to whom a child has been born, or the father or mother by whom a child has been legally adopted.

(b) "Guardian" means a guardian of the person of a child, other than a parent, who is legally appointed by a court of competent jurisdiction.

(c) "Custodian" means any person having the present care or custody of a child, other than a parent or guardian of the child.

(d) "School day" means not less than five and one-half (5-½) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.

(e) "School" means any public school, including a charter school, in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.

(f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program.

(g) "School attendance officer" means a person employed by the State Department of Education pursuant to Section 37-13-89.

(h) "Appropriate school official" means the superintendent of the school district, or his designee, or, in the case of a nonpublic school, the principal or the headmaster.

(i) "Nonpublic school" means an institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each school year. This definition shall include, but not be limited to, private, church, parochial and home instruction programs.

(3) A parent, guardian or custodian of a compulsory-school-age child in this state shall cause the child to enroll in and attend a public school or legitimate nonpublic school for the period of time that the child is of compulsory school age, except under the following circumstances:

(a) When a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation.

(b) When a compulsory-school-age child is enrolled in and pursuing a course of special education, remedial education or education for handicapped or physically or mentally disadvantaged children.

(c) When a compulsory-school-age child is being educated in a legitimate home instruction program.

The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any charter school or nonpublic school, or the appropriate school official for any or all children attending a charter school or nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.

The form of the certificate of enrollment shall be prepared by the Office of Compulsory School Attendance Enforcement of the State Department of Education and shall be designed to obtain the following information only:

(i) The name, address, telephone number and date of birth of the compulsory-school-age child;

(ii) The name, address and telephone number of the parent, guardian or custodian of the compulsory-school-age child;

(iii) A simple description of the type of education the compulsory-school-age child is receiving and, if the child is enrolled in a nonpublic school, the name and address of the school; and

(iv) The signature of the parent, guardian or custodian of the compulsory-school-age child or, for any or all compulsory-school-age child or children attending a charter school or nonpublic school, the signature of the appropriate school official and the date signed.

The certificate of enrollment shall be returned to the school attendance officer where the child resides on or before September 15 of each year. Any parent, guardian or custodian found by the school attendance officer to be in noncompliance with this section shall comply, after written notice of the noncompliance by the school attendance officer, with this subsection within ten (10) days after the notice or be in violation of this section. However, in the event the child has been enrolled in a public school within fifteen (15) calendar days after the first day of the school year as required in subsection (6), the parent or custodian may, at a later date, enroll the child in a legitimate nonpublic school or legitimate home instruction program and send the certificate of enrollment to the school attendance officer and be in compliance with this subsection.

For the purposes of this subsection, a legitimate nonpublic school or legitimate home instruction program shall be those not operated or instituted for the purpose of avoiding or circumventing the compulsory attendance law.

(4) An "unlawful absence" is an absence for an entire school day or during part of a school day by a compulsory-school-age child, which absence is not due to a valid excuse for temporary nonattendance. For purposes of reporting absenteeism under subsection (6) of this section, if a compulsory-school-age child has an absence that is more than thirty-seven percent (37%) of the instructional day, as fixed by the school board for the school at which the compulsory-school-age child is enrolled, the child must be considered absent the entire school day. Days missed from school due to disciplinary suspension shall not be considered an "excused" absence under this section. This subsection shall not apply to children enrolled in a nonpublic school.

Each of the following shall constitute a valid excuse for temporary nonattendance of a compulsory-school-age child enrolled in a noncharter public school, provided satisfactory evidence of the excuse is provided to the superintendent of the school district, or his designee:

(a) An absence is excused when the absence results from the compulsory-school-age child's attendance at an authorized school activity with the prior approval of the superintendent of the school district, or his designee. These activities may include field trips, athletic contests, student conventions, musical festivals and any similar activity.

(b) An absence is excused when the absence results from illness or injury which prevents the compulsory-school-age child from being physically able to attend school.

(c) An absence is excused when isolation of a compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.

(d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family members of a compulsory-school-age child shall include children, spouse, grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.

(e) An absence is excused when it results from a medical or dental appointment of a compulsory-school-age child.

(f) An absence is excused when it results from the attendance of a compulsory-school-age child at the proceedings of a court or an administrative tribunal if the child is a party to the action or under subpoena as a witness.

(g) An absence may be excused if the religion to which the compulsory-school-age child or the child's parents adheres, requires or suggests the observance of a religious event. The approval of the absence is within the discretion of the superintendent of the school district, or his designee, but approval should be granted unless the religion's observance is of such duration as to interfere with the education of the child.

(h) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that the purpose of the absence is to take advantage of a valid educational opportunity such as travel, including vacations or other family travel. Approval of the absence must be gained from the superintendent of the school district, or his designee, before the absence, but the approval shall not be unreasonably withheld.

(i) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that conditions are sufficient to warrant the compulsory-school-age child's nonattendance. However, no absences shall be excused by the school district superintendent, or his designee, when any student suspensions or expulsions circumvent the intent and spirit of the compulsory attendance law.

(j) An absence is excused when it results from the attendance of a compulsory-school-age child participating in official organized events sponsored by the 4-H or Future Farmers of America (FFA). The excuse for the 4-H or FFA event must be provided in writing to the appropriate school superintendent by the Extension Agent or High School Agricultural Instructor/FFA Advisor.

(k) An absence is excused when it results from the compulsory-school-age child officially being employed to serve as a page at the State Capitol for the Mississippi House of Representatives or Senate.

(5) Any parent, guardian or custodian of a compulsory-school-age child subject to this section who refuses or willfully fails to perform any of the duties imposed upon him or her under this section or who intentionally falsifies any information required to be contained in a certificate of enrollment, shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39.

Upon prosecution of a parent, guardian or custodian of a compulsory-school-age child for violation of this section, the presentation of evidence by the prosecutor that shows that the child has not been enrolled in school within eighteen (18) calendar days after the first day of the school year of the public school which the child is eligible to attend, or that the child has accumulated twelve (12) unlawful absences during the school year at the public school in which the child has been enrolled, shall establish a prima facie case that the child's parent, guardian or custodian is responsible for the absences and has refused or willfully failed to perform the duties imposed upon him or her under this section. However, no proceedings under this section shall be brought against a parent, guardian or custodian of a compulsory-school-age child unless the school attendance officer has contacted promptly the home of the child and has provided written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance.

(6) If a compulsory-school-age child has not been enrolled in a school within fifteen (15) calendar days after the first day of the school year of the school which the child is eligible to attend or the child has accumulated five (5) unlawful absences during the school year of the public school in which the child is enrolled, the school district superintendent or his designee shall report, within two (2) school days or within five (5) calendar days, whichever is less, the absences to the school attendance officer. The State Department of Education shall prescribe a uniform method for schools to utilize in reporting the unlawful absences to the school attendance officer. The superintendent or his designee, also shall report any student suspensions or student expulsions to the school attendance officer when they occur.

(7) When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a petition with the youth court under Section 43-21-451 or shall file a petition in a court of competent jurisdiction as it pertains to parent or child. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children, and shall be authorized to file a petition with the youth court under Section 43-21-451 or file a petition or information in the court of competent jurisdiction as it pertains to parent or child for violation of this section. The youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory

School Attendance Law, and may order the child to enroll or re-enroll in school. The superintendent of the school district to which the child is ordered may assign, in his discretion, the child to the alternative school program of the school established pursuant to Section 37-13-92.

(8) The State Board of Education shall adopt rules and regulations for the purpose of reprimanding any school superintendents who fail to timely report unexcused absences under the provisions of this section.

(9) Notwithstanding any provision or implication herein to the contrary, it is not the intention of this section to impair the primary right and the obligation of the parent or parents, or person or persons in loco parentis to a child, to choose the proper education and training for such child, and nothing in this section shall ever be construed to grant, by implication or otherwise, to the State of Mississippi, any of its officers, agencies or subdivisions any right or authority to control, manage, supervise or make any suggestion as to the control, management or supervision of any private or parochial school or institution for the education or training of children, of any kind whatsoever that is not a public school according to the laws of this state; and this section shall never be construed so as to grant, by implication or otherwise, any right or authority to any state agency or other entity to control, manage, supervise, provide for or affect the operation, management, program, curriculum, admissions policy or discipline of any such school or home instruction program.

**HISTORY: Laws, 1977, ch. 483, § 1; Laws, 1982, Ex Sess, ch. 17, § 21; Laws, 1987, ch. 460; Laws, 1991, ch. 308, § 1; Laws, 1991, ch. 539, § 2; Laws, 1992, ch. 516, § 1; Laws, 1992, ch. 524, § 8; Laws, 1993, ch. 543, § 3; Laws, 1994, ch. 604, § 1; Laws, 1995, ch. 570, § 1; Laws, 1998, ch. 566, § 6; Laws, 2000, ch. 397, § 1; Laws, 2003, ch. 397, § 1; Laws, 2009, ch. 526, § 1; Laws, 2013, ch. 495, § 12; Laws, 2013, ch. 497, § 60; Laws, 2013, ch. 559, § 1; Laws, 2013, ch. 562, § 1; Laws, 2014, ch. 442, § 2; Laws, 2014, ch. 491, § 9, eff from and after passage (approved April 15, 2014).**

**Joint Legislative Committee Note —** Section 12 of ch. 495, Laws of 2013, effective from and after passage (approved April 17, 2013), amended this section. Section 60 of ch. 497, Laws of 2013, effective from and after July 1, 2013 (approved April 17, 2013). Section 1 of ch. 559, Laws of 2013, effective July 1, 2013 (approved April 25, 2013), and Section 1 of ch. 562, Laws of 2013, effective from and after passage (approved April 25, 2013), also amended this section. As set out above, this section reflects the language from all four amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee ratified the integration of these amendments as consistent with legislative intent at the August 1, 2013, meeting of the committee.

Section 2 of ch. 442, Laws of 2014, effective from and after passage (approved March 26, 2014), amended this section. Section 9 of ch. 491, Laws of 2014, effective from and after passage (approved April 15, 2014), also amended this section. As set out above, this section reflects the language of Section 9 of ch. 491, Laws of 2014, which contains language that specifically provides that it supersedes § 37-13-91 as amended by Chapter 442, Laws of 2014.

**Editor's Notes —** As amended by Laws of 1995, ch. 570, § 1, paragraph 8(c) of this section contained a reference stating "until the effective date of Senate Bill No. 3019, 1994 Regular Session." By direction of the Revisor of Statutes, this language was changed to read "April 8, 1994."

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

School district superintendents to timely report absences under the Compulsory Attendance Law, see § 37-9-14.

Office of Compulsory School Attendance Enforcement, see § 37-13-81 et seq.

Qualifications and duties of school attendance officers, see § 37-13-89.

Alternative school program for compulsory-school-age students, see § 37-13-92.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

Community and Junior College adult education program to serve all persons age sixteen and older not enrolled or required to be enrolled in school by this section, see § 37-35-1.

State Board for Community and Junior College programs to prepare persons age sixteen and older, and not enrolled or required to be enrolled in school by this section, for GED test, see § 37-35-9.

Exemption from disease immunization of students in home instruction program as defined by this section, see § 41-23-37.

## JUDICIAL DECISIONS

**1. In general.**

School district policy of refusing to allow credit for days of absence due to suspension was enforceable against student suspended for violation of district's alcohol policy, even though district's policy of treating such absences as unexcused was void as against public policy, where student handbook clearly stated that punishment during expulsion was no credit for days suspended. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

School district's policy of refusing to allow students suspended for violation of alcohol policy to attend statutorily mandated alternate program for suspended or expelled students, and treating days of absence due to suspension for violation of alcohol policy as unexcused absences pursuant to district's truancy policy, contravened public policy, and its enforcement against student who violated alcohol policy was thus arbitrary and capricious under state compulsory attendance law; compulsory attendance law distinguished between absences due to truancy and due to suspension, legislature did not except particular categories of offenses from alternative program requirement, and school district thus could not force student to be absent from alternative program and then count those absences against him to lower his grade pursuant to its truancy policy. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

Section 37-13-91, the compulsory school attendance law, is unconstitutional insofar as it requires the selection and supervision of school attendance officers to be undertaken by youth court judges; the youth court judge's selection and supervision of school attendance officers as provided for in the statute violates Article I, §§ 1 and 2 of the Mississippi Constitution – the separation of powers provisions-because the judge is charged with the executive function of administering an existing law, far removed from judiciary functions. In the Interest of R.G., 632 So. 2d 953, 1994 Miss. LEXIS 108 (Miss. 1994).

## OPINIONS OF THE ATTORNEY GENERAL

Position of school attendance officer is full-time position; but officer may engage in other employment outside regular office and field hours assigned to officer so long as it does not adversely affect performance of officer's duties. Farese, Sept. 9, 1991, A.G. Op. #92-0700.

For purposes of participation in health insurance cafeteria plan, school attendance officer is employee of judicial department of state government and is county rather than state employee, except that school attendance officer appointed by municipal youth court is municipal employee. Coleman, Sept. 16, 1992, A.G. Op. #92-0690.

Alternative school programs are integral part of school district; programs are operated in connection with regular programs of district and are subject to accreditation standards established by State Department of Education; therefore, assignment to alternative program is not expulsion or suspension from school district and would not require full due process hearing; informal conference with student during which he or she is allowed to explain his or her side is sufficient process in such cases. Lowery Sept. 23, 1993, A.G. Op. #93-0681.

Under present circumstances, position of school attendance officer continues to exist but with no effective legislation as to assignment and payment of same during period between February 17, 1994 and passage of proposed legislation in April of 1994, Department of Finance and Administration was authorized to approve and pay proper travel expenses and expenditures during interim period unless or until court of competent jurisdiction ruled otherwise since under existing facts school attendance officers, while not presently assigned to specific agency, department or institution, remain employed by State of Mississippi. Ranck, March 18, 1994, A.G. Op. #94-0126.

Certificates of enrollment are not required for students enrolled in public schools and that the exemption from compulsory attendance afforded by Section 37-13-91(3)(b) applies only to those special education students who have been enrolled by their parents or guardians in special education courses in non-public schools or in legitimate home instruction programs and not to special education students enrolled in the public schools. Caranna, April 21, 1995, A.G. Op. #95-0235.

The district attorney was required to retain certain persons in school attendance officer positions as of the date Section 37-13-91 was amended in 1994, for a period of one year; thereafter the district attorney may hire and fire such school attendance officers at will. Peters, October 18, 1995, A.G. Op. #95-0623.

Since the duties of the school attendance officer, in addition to those required by Section 43-21-119, are assigned by the district attorney under Section 37-13-91(7), and the attendance officer is required by subsection (7) to cooperate with the court, the district attorney and the youth court judge should enter into agreement on the role the school attendance officer is to play in getting truancy cases into and through the youth court. This agreement should also include guidelines for the counseling of truant juveniles after the case has been referred to the youth court. Harkey, December 16, 1996, A.G. Op. #96-0829.

A school district cannot impose an automatic failure upon a compulsory-school-age child for accumulating a set number of absences when those absences are by statute lawful and must be excused, nor may a school district apply an absences policy that automatically fails a suspended student for the semester; such a policy, if it acts to fail a truant but passing student, would be disciplinary and punitive in nature, and imposition would be subject to procedural due process. Carter, January 9, 1998, A.G. Op. #97-0817.

A school board has the authority to retain a student in kindergarten for an additional year if the district deems that placement of the student in the first grade would not be the most appropriate educational placement. Johnson, Dec. 3, 2002, A.G. Op. #02-0450.

A school district has the inherent power to make rules and regulations regarding the placement of its students in the appropriate grade. This authority includes making appropriate placements of a child into a particular grade by way of either assignment, promotion or retention of a student. Note: Johnson, Dec. 3, 2002, A.G.

Op. 02-0450 is modified. Storey, July 18, 2003, A.G. Op. 03-0342.

## RESEARCH REFERENCES

**ALR.**

Validity, construction, and application of statute, regulation, or policy governing home schooling or affecting rights of home-schooled students. 70 A.L.R.5th 169.

**Am. Jur.**

5A Am. Jur. Pl & Pr Forms (Rev), Civil Rights, Form 141.1 (complaint, petition, or declaration – home instruction – religious principles – for injunctive and declaratory relief).

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

**Lawyers' Edition.**

Establishment and free exercise of religion clauses of Federal Constitution's first Amendment as applied to public schools – Supreme Court Cases. 96 L. Ed. 2d 828.

**Practice References.**

Education Law (Matthew Bender).

## § 37-13-92. Alternative school program for compulsory-school-age students; placement of children in alternative school; transportation of students; expenses; annual report.

(1) Beginning with the school year 2004-2005, the school boards of all school districts shall establish, maintain and operate, in connection with the regular programs of the school district, an alternative school program or behavior modification program as defined by the State Board of Education for, but not limited to, the following categories of compulsory-school-age students:

(a) Any compulsory-school-age child who has been suspended for more than ten (10) days or expelled from school, except for any student expelled for possession of a weapon or other felonious conduct;

(b) Any compulsory-school-age child referred to such alternative school based upon a documented need for placement in the alternative school program by the parent, legal guardian or custodian of such child due to disciplinary problems;

(c) Any compulsory-school-age child referred to such alternative school program by the dispositive order of a chancellor or youth court judge, with the consent of the superintendent of the child's school district;

(d) Any compulsory-school-age child whose presence in the classroom, in the determination of the school superintendent or principal, is a disruption to the educational environment of the school or a detriment to the interest and welfare of the students and teachers of such class as a whole; and

(e) No school district is required to place a child returning from out-of-home placement in the mental health, juvenile justice or foster care system in alternative school. Placement of a child in the alternative school shall be done consistently, and for students identified under the Individuals with Disabilities Education Act (IDEA), shall adhere to the requirements of the Individuals with Disabilities Education Improvement Act of 2004. If a school district chooses to place a child in alternative school the district will make an individual assessment and evaluation of that child in the following time periods:

(i) Five (5) days for a child transitioning from a group home, mental health care system, and/or the custody of the Department of Human Services, Division of Youth and Family Services;

(ii) Ten (10) days for a child transitioning from a dispositional placement order by a youth court pursuant to Section 43-21-605; and

(iii) An individualized assessment for youth transitioning from out-of-home placement to the alternative school shall include:

1. A strength needs assessment.

2. A determination of the child's academic strengths and deficiencies.

3. A proposed plan for transitioning the child to a regular education placement at the earliest possible date.

(2) The principal or program administrator of any such alternative school program shall require verification from the appropriate guidance counselor of any such child referred to the alternative school program regarding the suitability of such child for attendance at the alternative school program. Before a student may be removed to an alternative school education program, the superintendent of the student's school district must determine that the written and distributed disciplinary policy of the local district is being followed. The policy shall include standards for:

(a) The removal of a student to an alternative education program that will include a process of educational review to develop the student's individual instruction plan and the evaluation at regular intervals of the student's educational progress; the process shall include classroom teachers and/or other appropriate professional personnel, as defined in the district policy, to ensure a continuing educational program for the removed student;

(b) The duration of alternative placement; and

(c) The notification of parents or guardians, and their appropriate inclusion in the removal and evaluation process, as defined in the district policy. Nothing in this paragraph should be defined in a manner to circumvent the principal's or the superintendent's authority to remove a student to alternative education.

(3) The local school board or the superintendent shall provide for the continuing education of a student who has been removed to an alternative school program.

(4) A school district, in its discretion, may provide a program of High School Equivalency Diploma preparatory instruction in the alternative school program. However, any High School Equivalency Diploma preparation program offered in an alternative school program must be administered in compliance with the rules and regulations established for such programs under Sections 37-35-1 through 37-35-11 and by the Mississippi Community College Board. The school district may administer the High School Equiva-

lency Diploma Testing Program under the policies and guidelines of the Testing Service of the American Council on Education in the alternative school program or may authorize the test to be administered through the community/junior college district in which the alternative school is situated.

(5) Any such alternative school program operated under the authority of this section shall meet all appropriate accreditation requirements of the State Department of Education.

(6) The alternative school program may be held within such school district or may be operated by two (2) or more adjacent school districts, pursuant to a contract approved by the State Board of Education. When two (2) or more school districts contract to operate an alternative school program, the school board of a district designated to be the lead district shall serve as the governing board of the alternative school program. Transportation for students attending the alternative school program shall be the responsibility of the local school district. The expense of establishing, maintaining and operating such alternative school program may be paid from funds contributed or otherwise made available to the school district for such purpose or from local district maintenance funds.

(7) The State Board of Education shall promulgate minimum guidelines for alternative school programs. The guidelines shall require, at a minimum, the formulation of an individual instruction plan for each student referred to the alternative school program and, upon a determination that it is in a student's best interest for that student to receive High School Equivalency Diploma preparatory instruction, that the local school board assign the student to a High School Equivalency Diploma preparatory program established under subsection (4) of this section. The minimum guidelines for alternative school programs shall also require the following components:

(a) Clear guidelines and procedures for placement of students into alternative education programs which at a minimum shall prescribe due process procedures for disciplinary and High School Equivalency Diploma placement;

(b) Clear and consistent goals for students and parents;

(c) Curricula addressing cultural and learning style differences;

(d) Direct supervision of all activities on a closed campus;

(e) Attendance requirements that allow for educational and workforce development opportunities;

(f) Selection of program from options provided by the local school district, Division of Youth Services or the youth court, including transfer to a community-based alternative school;

(g) Continual monitoring and evaluation and formalized passage from one (1) step or program to another;

(h) A motivated and culturally diverse staff;

(i) Counseling for parents and students;

(j) Administrative and community support for the program; and

(k) Clear procedures for annual alternative school program review and evaluation.

(8) On request of a school district, the State Department of Education shall provide the district informational material on developing an alternative school program that takes into consideration size, wealth and existing facilities in determining a program best suited to a district.

(9) Any compulsory-school-age child who becomes involved in any criminal or violent behavior shall be removed from such alternative school program and, if probable cause exists, a case shall be referred to the youth court.

(10) The State Board of Education shall promulgate guidelines for alternative school programs which provide broad authority to school boards of local school districts to establish alternative education programs to meet the specific needs of the school district.

(11) Each school district having an alternative school program shall submit a report by July 31 of each calendar year to the State Department of Education describing the results of its annual alternative school program review and evaluation undertaken pursuant to subsection (7)(k). The report shall include a detailed account of any actions taken by the school district during the previous year to comply with substantive guidelines promulgated by the State Board of Education under subsection (7)(a) through (j). In the report to be implemented under this section, the State Department of Education shall prescribe the appropriate measures on school districts that fail to file the annual report. The report should be made available online via the department's website to ensure transparency, accountability and efficiency.

**HISTORY: Laws, 1991, ch. 539, § 6; Laws, 1992, ch. 524, § 9; Laws, 1994, ch. 555, § 1; Laws, 1994, ch. 607, § 12; Laws, 1995, ch. 610, § 1; Laws, 1997, ch. 604, § 1; Laws, 2000, ch. 559, § 3; Laws, 2004, ch. 563, § 3; Laws, 2007, ch. 326, § 1; Laws, 2009, ch. 511, § 1; Laws, 2011, ch. 424, § 1; Laws, 2014, ch. 397, § 16; Laws, 2014, ch. 398, § 2; Laws, 2014, ch. 442, § 5; Laws, 2014, ch. 490, § 1, eff from and after July 1, 2015.**

**Joint Legislative Committee Note —** Section 16 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), amended this section. Section 2 of ch. 398, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), Section 5 of ch. 442, Laws of 2014, effective from and after passage (approved March 26, 2014), and Section 1 of ch. 490, Laws of 2014, effective from and after July 1, 2015 (approved April 15, 2014), also amended this section. As set out above, the version of the section effective until July 1, 2015, reflects amendments by Chapters 397, 398 and 442. These amendments were integrated with the amendments from Chapter 490 in the version of the section effective from and after July 1, 2015, except for the new language at the end of subsection (11). Because the new language in subsection (11) in Chapter 490 conflicts in substance with the new language in subsection (11) in Chapter 442, the new language at the end of subsection (11) from both chapters cannot be integrated. As a result, the end of subsection (11) in the version of the section effective from and after July 1, 2015, contains only the new language from Chapter 490, because that chapter has the latest effective date. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Mississippi Community College Board generally, see § 37-4-1 et seq.

Suspension of pupils, see § 37-9-71.

Expulsion of student possessing controlled substance or weapon or committing violent act, see § 37-11-18.

Expulsion of habitually disruptive students, see § 37-11-18.1.

Suspension or expulsion of student damaging school property, see § 37-11-19.

Training and education course for school attendance officers, see § 37-13-107.

Youth court generally, see § 43-21-101 et seq.

Definition of "delinquent child," see § 43-21-105.

Power of superintendent of school district, in which child is ordered by youth court to enroll, to assign child to alternative school program, see § 43-21-621.

## JUDICIAL DECISIONS

**1. In general.**

School district's policy of refusing to allow students suspended for violation of alcohol policy to attend statutorily mandated alternate program for suspended or expelled students, and treating days of absence due to suspension for violation of alcohol policy as unexcused absences pursuant to district's truancy policy, contravened public policy, and its enforcement against student who violated alcohol policy was thus arbitrary and capricious under state compulsory attendance law; compulsory attendance law distinguished between absences due to truancy and due to suspension, legislature did not except particular categories of offenses from alternative program requirement, and school district thus could not force student to be absent from alternative program and then count those absences against him to lower his grade pursuant to its truancy policy. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

School district policy of refusing to allow credit for days of absence due to suspension was enforceable against student suspended for violation of district's alcohol policy, even though district's policy of treating such absences as unexcused was void as against public policy, where student handbook clearly stated that punishment during expulsion was no credit for days suspended. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

## OPINIONS OF THE ATTORNEY GENERAL

A youth court judge has the authority to send children to the alternative school on a case-by-case basis, however this is not a blanket authorization to send "all children returning from the training school" to the alternative school. Hudson, Nov. 6, 1991, A.G. Op. #91-0823.

A youth court judge cannot place a child who is under youth court jurisdiction in an alternative school program which does not meet the appropriate accreditation requirements. Hudson, Nov. 6, 1991, A.G. Op. #91-0823.

Neither Section 37-13-92 nor Sections 37-7-411 and 413 allows creation of separate legal entities or school districts when authority was granted to establish alternative school programs or jointly operate school; only Legislature can create autonomous school district as legal entity; school districts have no such power and bring no such power to interlocal agreement; no school district participant has authority to relieve itself of responsibility for operation of alternative school program through interlocal agreement. Yoder Oct. 6, 1993, A.G. Op. #93-0685.

Under Section 37-13-92, the school board and school officials have broad authority to suspend or expel students for misconduct, those students expelled for acts such as the possession or consumption of alcohol which do not rise to the level of weapons possession or other felonious conduct must be considered for alternative school placement. Howell, June 7, 1996, A.G. Op. #96-0346.

Pursuant to Section 37-13-92, if the acts of a student, though not rising to a felony are such as to pose a threat to the safety of himself or others or disrupt the educational process at the alternative school, then at the discretion of the school board, taking under consideration recommendations made pursuant to subsection (2), the student may be removed from the school system altogether. Howell, June 7, 1996, A.G. Op. #96-0346.

Although subsection (1)(a) is clear that compulsory-school-age children who are suspended for possession of a weapon or other felonious conduct need not be assigned to an alternative school, those children whose offenses do not fall within these two categories and whose offenses result in a suspension for more than ten days must be assigned to alternative school. Chaney, April 24, 1998, A.G. Op. #98-0218.

Neither the Board of Trustees nor the Superintendent of Education have the authority to decide on a case-by-case basis which students who have been suspended or expelled for offenses other than possession of a weapon or other felonious conduct may attend the alternative school and which students' suspensions or expulsions require they be excluded from all school programs. Chaney, April 24, 1998, A.G. Op. #98-0218.

If a school district determines that the acts of a student are such as to pose a threat to the safety of himself or others or may disrupt the educational process at the alternative school, then at the discretion of the school board, taking under consideration recommendations made by the administrator of the alternative school and the appropriate guidance counselor, the student may be removed from the school system altogether. Thompson, July 24, 1998, A.G. Op. #98-0445.

If a mandatory school uniform rule furthers a substantial, legitimate interest of the school district, as determined by the school board, then it is within the discretion of a school board, with proper notice, to prescribe the discipline to be administered for the violation of the rule or regulation; assuming that the child is financially able to purchase the required uniform, a school district may administer, subject to procedural due process, appropriate disciplinary measures for refusal to comply with the school rule, including suspension or expulsion; however, long term out-of-school suspension or expulsion for violation of a school uniform policy is not permitted. Smith, June 11, 1999, A.G. Op. #99-0274.

Education is not a fundamental right, and the proper test in determining whether a student's due process rights have been violated by a disciplinary action removing them from the school setting is whether such action was rationally related to legitimate governmental interests. Fleming, July 15, 2005, A.G. Op. 05-0320.

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

### RESEARCH REFERENCES

**ALR.**

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student. 47 A.L.R.5th 1.

## §§ 37-13-93 through 37-13-105. Repealed.

Repealed by Laws, 1982, Ex Sess, ch. 17, § 45, eff from and after July 1, 1983.

§§ 37-13-93 through 37-13-105. [Laws, 1977, ch. 483, §§ 2-8]

**Editor's Notes** — Former §§ 37-13-93 through 37-13-105 related to compulsory school attendance.

### § 37-13-107. Training and education course for school attendance officers; effect of failure to receive certificate.

(1) Every school attendance officer shall be required annually to attend and complete a comprehensive course of training and education which is provided or approved by the Office of Compulsory School Attendance Enforcement of the State Department of Education. Attendance shall be required beginning with the first training seminar conducted after the school attendance officer is employed as a school attendance officer.

(2) The Office of Compulsory School Attendance Enforcement shall provide or approve a course of training and education for school attendance officers of the state. The course shall consist of at least twelve (12) hours of training per year. The content of the course of training and when and where it is to be conducted shall be approved by the office. A certificate of completion shall be furnished by the State Department of Education to those school attendance officers who complete the course. Each certificate shall be made a permanent record of the school attendance officer supervisor's office where the school attendance officer is employed.

(3) Upon the failure of any person employed as a school attendance officer to receive the certificate of completion from the State Department of Education within the first year of his employment, the person shall not be allowed to carry out any of the duties of a school attendance officer and shall not be entitled to compensation for the period of time during which the certificate has not been obtained.

**HISTORY: Laws, 1993, ch. 602, § 16; Laws, 1995, ch. 570, § 2; Laws, 1998, ch. 566, § 7; Laws, 2001, ch. 368, § 1, eff from and after July 1, 2001.**

**Cross References** — State Department of Education generally, see § 37-3-1 et seq.
Office of Compulsory School Attendance Enforcement, see § 37-13-81 et seq.
Qualifications and duties of school attendance officers, see § 37-13-89.

## COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAM

Sec.
37-13-131. Administration of program; Office of Comprehensive School Health Education; curriculum components.
37-13-133. Professional and nonprofessional staff for program.
37-13-134. Comprehensive School Health Education Program.
37-13-134.1. School health grant pilot program; purpose; components of implementation plan.
37-13-135. Implementation of program by school boards; local health education council; cooperation by school boards of school districts; implementation and development of plans by Commission on School Accreditation.

Sec.
37-13-137. State Board of Education to develop regulations to promote healthy food choices and food preparation for school children; Office of Healthy Schools to train certain school district personnel on healthy food service practices.

## § 37-13-131. Administration of program; Office of Comprehensive School Health Education; curriculum components.

(1) The State Department of Education is designated as the state agency responsible for the administration and supervision of the Comprehensive School Health Education Program as an educational curriculum in the State of Mississippi. It is the intent of the Legislature that all funds made available to the State Department of Education for the purpose of comprehensive school health education shall be administered by the State Department of Education.

(2) Pursuant to the provisions of subsection (1) of this section, the State Department of Education is authorized to establish an Office of Comprehensive School Health Education within the framework of the State Department of Education for the purpose of developing standards, procedures and criteria for the administration and supervision of a statewide program of health education in Kindergarten through Grade 12. The State Department of Education, through the Office of Comprehensive School Health Education, shall assume the further responsibility for promoting a statewide effort designed to prepare local school faculties and staffs to incorporate the comprehensive health education concept into their local educational programs.

(3) The Mississippi Department of Health, in conjunction with the Office of Student Development-Branch of Health-Related Services of the State Department of Education, shall develop a long-range strategic plan for a Comprehensive School Health Education Program in Grades K through 12. The Comprehensive School Health Education Program shall encompass four (4) interdependent components: (a) health education; (b) health service; (c) physical education and fitness; and (d) a healthful school environment. These curriculum components shall be designed to develop decision-making competencies related to health and health behavior. Such curriculum components are intended to motivate health maintenance and promote wellness, not only to prevent disease or disability. The Mississippi Department of Health, in conjunction with the Office of Student Development-Branch of Health-Related Services of the Department of Education, shall develop the strategic plan and make a report thereon to the Governor and the Legislature on or before January 1, 1995.

**HISTORY: Laws, 1990, ch. 457, § 1; Laws, 1994, ch. 632, § 1, eff from and after July 1, 1994.**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Professional and non professional staff for statewide program of health education, see § 37-13-133.

State Department of Health generally, see § 41-3-1 et seq.

## § 37-13-133. Professional and nonprofessional staff for program.

Under the provisions of Section 37-13-131, the State Department of Education may provide for the services of a School Health Services Coordinator, School Instruction Coordinator, School Environmental Specialist, and such other professional and nonprofessional staff as may be needed and as funds available to the department will permit. The State Department of Education, subject to the availability of funds specifically for such purpose, shall employ a physical activity coordinator K-12 not later than sixty (60) days after receipt of such funds, in accordance with the provisions of Section 37-13-134. It shall be the responsibility of that professional staff to coordinate efforts of the personnel of the State Department of Education, the state's colleges and universities, local public schools and other appropriate agencies to provide the comprehensive health education curriculum.

**HISTORY: Laws, 1990, ch. 457, § 2; Laws, 1994, ch. 632, § 2; Laws, 2002, ch. 585, § 1, eff from and after July 1, 2002.**

**Cross References** — Office of Comprehensive School Health Education, see § 37-13-131.

Recommended guidelines for physical education and fitness classes, see § 37-13-134.

## § 37-13-134. Comprehensive School Health Education Program.

(1) The Legislature recognizes that there is a problem with Mississippi student inactivity and obesity, and therefore requires the following guidelines for school district physical education, health education and physical activity and fitness classes:

(a) Kindergarten through Grade 8: One hundred fifty (150) minutes per week of physical activity-based instruction and forty-five (45) minutes per week of health education instruction, as defined by the State Board of Education.

(b) Grades 9 through 12: One-half (½) Carnegie unit requirement in physical education or physical activity for graduation. Beginning with the 2015-2016 Ninth Grade class, an instructional component on the proper administration of cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED) shall be included as part of the physical education or health education curriculum. The curricula shall incorporate into the instruction the psychomotor skills necessary to perform cardiopulmonary resuscitation and use of an automated external defibrillator as follows:

(i) An instructional program developed by the American Heart Association or the American Red Cross;

(ii) An instructional program which is nationally recognized and is based on the most current national evidence-based Emergency Cardiovascular Care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator;

(iii) A licensed teacher shall not be required to be a certified trainer of cardiopulmonary resuscitation, to facilitate, provide or oversee such instruction for noncertification; and

(iv) Courses which result in a certification being earned must be taught by an authorized CPR/AED instructor.

For purposes of this paragraph (b), the term "psychomotor skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as "psychomotor skills."

The requirements of this paragraph (b) shall be minimum requirements. Any local school district shall be authorized to offer CPR and AED instruction for longer periods of time than required herein, and may enhance the curriculum and training components.

(c) The State Department of Education shall establish a procedure for monitoring adherence by school boards to the requirements set forth in this section.

All instruction in physical education, health education and physical activity must be based on the most current state standards provided by the State Department of Education.

(2) Beginning with the 2006-2007 school year, each local school board shall, consistent with regulations adopted by the State Board of Education, adopt a school wellness plan which shall promote a healthy lifestyle for Mississippi's school children and staff. Beginning with the 2008-2009 school year, the school wellness plan shall also promote increased physical activity, healthy eating habits and abstinence from the use of tobacco and illegal drugs through programs that incorporate healthy lifestyle choices into core subject areas which may be developed in partnership with the Institute for America's Health.

(3) Beginning with the 2012-2013 school year, the State Board of Education, in consultation with the State Department of Health, shall have the authority to establish a school health pilot program to improve student health so that all students can fully participate and be successful in school. The school health pilot program shall be implemented in local school districts, as provided in Section 37-13-134.1.

(4) The Legislature shall appropriate sufficient state-source funds for the State Department of Education to employ a physical activity coordinator to assist districts on current and effective practices and on implementation of physical education and physical activity programs.

(5) The physical activity coordinator employed under Section 37-13-133 must have the qualifications prescribed in any of the following paragraphs, which are listed in the order of preference:

(a) A doctorate in physical education, exercise science or a highly related field, and at least three (3) years of experience in teaching physical education in Grades K-12 or in physical activity promotion/fitness leadership; or

(b) A master's degree in physical education, exercise science or a highly related field, and at least five (5) years of experience in teaching physical education in Grades K-12 or in physical activity promotion/fitness leadership; or

(c) A bachelor's degree in physical education, a teacher's license, and at least seven (7) years of experience in teaching physical education in Grades K-12 or in physical activity promotion/fitness leadership.

(6) The Governor's Commission on Physical Fitness and Sports created under Section 7-1-551 et seq., the Mississippi Council on Obesity Prevention and Management created under Section 41-101-1 et seq., the Task Force on Heart Disease and Stroke Prevention created under Section 41-103-1 et seq., the Mississippi Alliance for Health, Physical Education, Recreation and Dance, and the Mississippi Alliance for School Health shall provide recommendations to the State Department of Education regarding the employment of the physical activity coordinator. The department shall consider the recommendations of those entities in employing the physical activity coordinator.

(7) The physical activity coordinator shall present a state physical activity plan each year to the Governor's Commission on Physical Fitness and Sports, the Mississippi Council on Obesity Prevention and Management, the Task Force on Heart Disease and Stroke Prevention, the Mississippi Alliance for Health, Physical Education, Recreation and Dance, and the Mississippi Alliance for School Health.

(8) The physical activity coordinator shall monitor the districts for adherence to current Mississippi school accountability standards and for implementation of the physical education curriculum on file with the State Department of Education. The State Department of Education shall monitor and act as a clearinghouse for the activities of the local school health councils established pursuant to subsection (9) of this section.

(9)(a) The local school board of each school district shall establish a local school health council for each school which shall ensure that local community values are reflected in the local school's wellness plan to address school health. Such councils shall be established no later than November 1, 2006.

(b) The local school health council's duties shall include, but not be limited to, the following:

(i) Recommend age appropriate curriculum and the number of hours of instruction to be provided in health and physical activity-based education, provided that the number of hours shall not be less than that required by this section;

(ii) Recommend appropriate practices that include a coordinated approach to school health designed to prevent obesity, cardiovascular disease, Type II diabetes and other health risks, through coordination of:

1. Health education;
2. Physical education;
3. Nutritional services;
4. Parental/Community involvement;
5. Instruction to prevent the use of tobacco, drugs and alcohol;
6. Physical activity;
7. Health services;

8. Healthy environment;
9. Counseling and psychological services;
10. Healthy lifestyles; and
11. Staff wellness.

(iii) Provide guidance on the development and implementation of the local school wellness plan.

(c) The local school board shall appoint members to the local school health council. At a minimum, the school board shall appoint one (1) person from each of the following groups:

(i) Parents who are not employed by the school district;
(ii) The director of local school food services;
(iii) Public schoolteachers;
(iv) Public school administrators;
(v) District students;
(vi) Health care professionals;
(vii) The business community;
(viii) Law enforcement;
(ix) Senior citizens;
(x) The clergy;
(xi) Nonprofit health organizations; and
(xii) Faith-based organizations.

(10) Nothing in this section shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fund-raisers conducted by students, teachers, school groups, or parent groups when the items are intended for sale off the school campus.

**HISTORY: Laws, 2002, ch. 585, § 2; Laws, 2003, ch. 436, § 1; Laws, 2006, ch. 401, § 1; Laws, 2007, ch. 521, § 2; Laws, 2012, ch. 555, § 1; Laws, 2014, ch. 461, § 1; Laws, 2015, ch. 361, § 1, eff from and after passage (approved Mar. 17, 2015).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in statutory references in this section. In subsection (8), the reference to "subsection (8)" was changed to "subsection (9)" and in subdivision (9)(b)(i), the reference to "Section 37-13-134" was changed to "this section." The Joint Committee ratified the correction at its August 1, 2013, meeting.

**Editor's Notes —** Laws of 2007, ch. 521 § 1 provides:

"SECTION 1. This act shall be known as the Mississippi Healthy Students Act."

**Cross References —** Governor's Commission on Physical Fitness and Sports, see § 7-1-551 et seq.

State Board of Education to develop regulations to promote healthy food choices and food preparation for school children, see § 37-11-8.

Mississippi Council on Obesity Prevention and Management, see § 41-101-1 et seq.

Task Force on Heart Disease and Stroke Prevention, see § 41-103-1 et seq.

## § 37-13-134.1. School health grant pilot program; purpose; components of implementation plan.

(1) Subject to available funding, the State Department of Education, in consultation with the State Department of Health, shall establish the school

health grant pilot program to improve student health by assisting local school districts in implementing a school health program. In order to qualify for a school health grant, a school district shall submit a detailed implementation plan, developed in accordance with the guidelines for a school health program developed by the State Department of Education, and including the following components:

(a) A dedicated school health coordinator and technical and administrative support for collection of data and program evaluation.

(b) A description of how the school district currently addresses physical activity, nutrition, and other obesity prevention measures.

(c) A description of how the school district would use the state grant to augment what it is currently doing, including defining priorities based on the students' health need and meeting education performance indicators, developing an action plan for addressing those needs based on realistic goals and measurable objectives, establishing a timeline for implementation, and developing and maintaining a system to evaluate progress and outcomes for the program.

(d) All school districts receiving grants will report annually to the State Department of Education progress towards the achievement of state education performance indicators and standards and requirements relating to physical activity and nutrition.

(2) The amount in the school health grant pilot program shall be limited to the amount appropriated and shall be available to school districts based on the guidelines developed by the State Department of Education.

(3) Any grants made to school district shall be expended to supplement and not supplant any funds already expended as school health programs. For this purpose, expenditures of components enumerated in subsection (2) of this section for the current fiscal year shall be considered the base expenditure on school health and any school district receiving grant funds shall maintain this base.

(4) There is created in the State Treasury a fund into which any public or private funds from any source shall be deposited for the support of the activities of coordinated school health grant pilot program.

(5) State grants are only for coordination and improvement of school health programs to improve student health in accordance with the detailed plan submitted in accordance with subsection (2) of this section.

(6) The State Department of Education and the State Department of Health shall coordinate existing school health programs, grants and initiatives. To the extent possible, existing contracts and waiver requirements and funding, including Medicaid funding, shall also be coordinated.

(7) The use of grant funds shall be subject to audit by the Office of the State Auditor.

**HISTORY: Laws, 2012, ch. 555, § 2, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In (1)(c), "school district" was substituted for "agency" and in (2), "coordinated" was deleted following "The amount in the." The Joint Committee ratified the corrections at its August 16, 2012, meeting.

## § 37-13-135. Implementation of program by school boards; local health education council; cooperation by school boards of school districts; implementation and development of plans by Commission on School Accreditation.

(1) In addition to all other authority, duties and powers the school boards of the school districts of this state may now have, each is authorized and empowered to adopt plans for the implementation of the Comprehensive School Health Education Program into the local school curriculum.

(2) School boards shall appoint a local health education council to make recommendations regarding a comprehensive health education curriculum.

(3) There shall be cooperation between the State Department of Education, Office of Comprehensive School Health Education and the school boards of the several school districts in implementing this program as it best suits the needs of the individual districts.

(4) The Commission on School Accreditation shall encourage the development of plans of comprehensive school health education and the implementation thereof.

**HISTORY: Laws, 1990, ch. 457, § 3, eff from and after July 1, 1990.**

**Cross References** — Comprehensive School Health Education Program, see § 37-13-131 et seq.

Commission on School Accreditation, see § 37-17-1 et seq.

## § 37-13-137. State Board of Education to develop regulations to promote healthy food choices and food preparation for school children; Office of Healthy Schools to train certain school district personnel on healthy food service practices.

(1) The State Board of Education shall adopt regulations as provided in this section not later than March 1, 2008, which shall be effective for compliance by school districts beginning with the 2008-2009 school year, for the Child Nutrition School Breakfast and Lunch Programs that are not in conflict with the regulations of the United States Department of Agriculture (USDA). The regulations shall take into account the most recent and advanced scientific principles regarding good human health and fitness, and the effect of the regulations must be that the good health, well-being and fitness of Mississippi school children shall be advanced. The regulations shall include, but not be limited to, the following areas:

(a) Healthy food and beverage choices;

(b) Healthy food preparation;

(c) Marketing of healthy food choices to students and staff;

(d) Food preparation ingredients and products;

(e) Minimum and maximum time allotment for students and staff lunch and breakfast periods;

(f) The availability of food items during the lunch and breakfast periods of the Child Nutrition School Breakfast and Lunch Programs; and

(g) Methods to increase participation in the Child Nutrition School Breakfast and Lunch Programs.

(2) The Office of Healthy Schools of the State Department of Education shall provide comprehensive training for superintendents, business managers, food service directors and food service managers of a local school district, or the designees appointed by those individuals for training purposes, as required by the department on marketing healthy foods, creating a healthy cafeteria environment, effective and efficient food service operations, the standards and expectations of food service staff, and other topics as identified by the department. The department may determine the time and location of the trainings and the frequency with which they are held. Persons employed by a local school district having the certification as a Food Service Administrator III or IV shall be exempt from the training requirements of this subsection.

(3) Local school districts may adopt rules and regulations that may be more stringent but not in conflict with those adopted by the State Board of Education under this section.

**HISTORY: Laws, 2007, ch. 521, § 3; Laws, 2010, ch. 363, § 1, eff from and after July 1, 2010.**

**Editor's Notes —** Laws of 2007, ch. 521 § 1 provides:

"SECTION 1. This act shall be known as the Mississippi Healthy Students Act."

**Cross References —** State acceptance of National School Lunch Act and federal Child Nutrition Act, see § 37-11-7.

## HOME ECONOMICS PROGRAMS

Sec.
37-13-151. Provision of programs of education by school districts; contents; approval.
37-13-153. State funding for programs.
37-13-155. Application by school district or community/junior college district for funding to acquire and operate home economics training program for local community.

### § 37-13-151. Provision of programs of education by school districts; contents; approval.

Before July 1, 1997, all local school districts shall provide programs of education in home economics, in Grade 10, 11 or 12, which include course work in responsible parenting and family living skills. These programs shall contain instruction to prepare students to understand children's physical, mental, emotional and social growth and development as well as to assume responsibility for their care and guidance, with emphasis on nutrition, emotional health and physical health. All such programs shall be subject to the approval of the State Board of Education pursuant to Section 37-31-205(1)(d).

**HISTORY: Laws, 1994, ch. 553, § 1; reenacted, Laws, 1996, ch. 448, § 1; reenacted without change, Laws, 1999, ch. 414, § 1, eff from and after July 1, 1999.**

**Editor's Notes —** Laws of 1994, ch. 553, § 4, was amended by Laws of 1996, ch. 448, § 4, to extend the repeal date of the act from July 1, 1998 to July 1, 2000. Laws of 1999, ch. 414, § 4, amended Laws of 1994, ch. 553, § 4, as amended by Laws of 1996, ch. 448, § 2, by deleting the repealer provision.

**Cross References —** State funding for home economics programs, see § 37-13-153.

Authority of the State Board of Education regarding setting standards for and approving all vocational and technical educational programs in the public school system, including home economics, see § 37-31-205.

## § 37-13-153. State funding for programs.

State funding for the home economics programs required in Section 37-13-151 shall be phased in over a period of three (3) school years, beginning with the 1994-1995 school year. In the minimum education program and vocational education appropriation bills for fiscal year 1994-1995, there shall be a line item specifying the amount that is to be expended to employ no less than one (1) instructor in each high school in no less than one-third (⅓) of the school districts in the state. In the minimum education program and vocational education appropriation bills for fiscal year 1995-1996, there shall be a line item specifying the amount that is to be expended to employ no less than one (1) instructor in each high school in no less than two-thirds (⅔) of the school districts in the state. In the minimum education program and vocational education appropriation bills for fiscal year 1996-1997, there shall be a line item specifying the amount that is to be expended to employ no less than one (1) instructor in each high school in each school district in the state. Any funds so appropriated by line item which are not expended for this purpose in the vocational education appropriation may be expended for other related home economics vocational purposes during the fiscal year for which those funds were appropriated. The State Board of Education shall determine which districts shall receive funds for the home economics programs during each of the three (3) years of the phase-in period.

**HISTORY: Laws, 1994, ch. 553, § 2; reenacted, Laws, 1996, ch. 448, § 2; reenacted without change, Laws, 1999, ch. 414, § 2, eff from and after July 1, 1999.**

**Editor's Notes —** Laws of 1994, ch. 553, § 4, was amended by Laws of 1996, ch. 448, § 4, to extend the repeal date of the act from July 1, 1998 to July 1, 2000. Laws of 1999, ch. 414, § 4, amended Laws of 1994, ch. 553, § 4, as amended by Laws of 1996, ch. 448, § 2, by deleting the repealer provision.

## § 37-13-155. Application by school district or community/junior college district for funding to acquire and operate home economics training program for local community.

Subject to the availability of funds appropriated therefor, any school district or community/junior college district may apply for funding through the Division of Vocational and Technical Education of the State Department of Education to acquire and operate a home economics training program to provide instruction in quality child care and educational programs to the local community.

**HISTORY: Laws, 1994, ch. 553, § 3; reenacted, Laws, 1996, ch. 448, § 3; reenacted without change, Laws, 1999, ch. 414, § 3, eff from and after July 1, 1999.**

**Editor's Notes —** Laws of 1994, ch. 553, § 4, was amended by Laws of 1996, ch. 448, § 4, to extend the repeal date of the act from July 1, 1998 to July 1, 2000. Laws of 1999, ch. 414, § 4, amended Laws of 1994, ch. 553, § 4, as amended by Laws of 1996, ch. 448, § 2, by deleting the repealer provision.

**Cross References —** State funding for home economics programs, see § 37-13-153. Vocational education generally, see § 37-31-1 et seq.

## RELIGIOUS MATTERS IN PUBLIC SCHOOL COURSES OF STUDY

Sec.
37-13-161. Religious matters proper for inclusion in public school courses.
37-13-163. Posting or reading of historical documents with religious references; display of motto "In God We Trust.".

## § 37-13-161. Religious matters proper for inclusion in public school courses.

Nothing in this code shall be construed to prevent any local school board, in its discretion, from allowing references to religion or references to or the use of religious literature, history, art, music or other things having a religious significance in the public schools of such school district, when such references or uses do not constitute aid to any religious sect or sectarian purpose and when such references or uses are incidental to or illustrative of matters properly included in the course of study.

**HISTORY: Laws, 1997, ch. 599, § 1, eff from and after July 1, 1997.**

**Editor's Notes —** Laws of 1997, ch. 599, § 3, provides as follows:

"SECTION 3. The State Department of Education shall distribute a copy of this act to each school district; each school superintendent then shall distribute a copy to all teachers and administrators"

**Cross References —** Local school boards not permitted to prohibit teachers from discussing and answering questions about the origin of life, see § 37-11-63.

Doctrinal, sectarian or denominational teaching prohibited, see § 37-13-3.
School prayer, see §§ 37-13-4, 37-13-4.1.
Period of quiet reflection at opening of school day, see § 37-13-8.

RESEARCH REFERENCES

**ALR.**
Bible distribution or use in public schools – modern cases. 111 A.L.R. Fed. 1.

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 431 et seq.

## § 37-13-163. Posting or reading of historical documents with religious references; display of motto "In God We Trust."

(1) Any teacher, administrator, school council or local school board in any public school district in this state may post in a public school building, classroom or at any school event or read from any historical document or writing relating to the founding of the United States of America or this state, or both, notwithstanding the fact that such materials may include religious quotations, references or illustrations. There shall be no content-based censorship of American or Mississippi History, heritage or culture based on any religious references contained in such documents, writings or records.

(2) Principals and teachers in each public elementary and secondary school of each school district in this state shall display on an appropriately framed background with minimum dimensions of eleven (11) inches by fourteen (14) inches, the following motto of the United States of America in each classroom, school auditorium and school cafeteria under his or her supervision: "IN GOD WE TRUST." For purposes of this provision, "classroom" shall mean any room of a public school where instruction takes place.

**HISTORY: Laws, 1997, ch. 599, § 2; Laws, 2001, ch. 485, § 2, eff from and after July 1, 2001.**

**Editor's Notes —** Laws of 1997, ch. 599, § 3, provides as follows:

"SECTION 3. The State Department of Education shall distribute a copy of this act to each school district; each school superintendent then shall distribute a copy to all teachers and administrators."

**Cross References —** Doctrinal, sectarian or denominational teaching prohibited, see § 37-13-3.
School prayer, see §§ 37-13-4, 37-13-4.1.
Period of quiet reflection at opening of school day, see § 37-13-8.

RESEARCH REFERENCES

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Bible distribution or use in public schools – modern cases. 111 A.L.R. Fed. 1.

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 431 et seq.

## SEX AND ABSTINENCE EDUCATION

Sec.
37-13-171. Implementation of abstinence-only or abstinence-plus education; State Department of Education approval of curriculum for sex-related education required; components of abstinence-only and abstinence-plus education; parent programs; separation of students by gender during sex-related education instruction [Repealed effective July 1, 2021].
37-13-173. Notice to parents; right to request inclusion of children in program of instruction; review of materials.
37-13-175. Application of Sections 37-13-171 and 37-13-173 to biological science courses.

### § 37-13-171. Implementation of abstinence-only or abstinence-plus education; State Department of Education approval of curriculum for sex-related education required; components of abstinence-only and abstinence-plus education; parent programs; separation of students by gender during sex-related education instruction [Repealed effective July 1, 2021].

(1) The local school board of every public school district shall adopt a policy to implement abstinence-only or abstinence-plus education into its curriculum by June 30, 2012, which instruction in those subjects shall be implemented not later than the start of the 2012-2013 school year or the local school board shall adopt the program which has been developed by the Mississippi Department of Human Services and the Mississippi Department of Health. The State Department of Education shall approve each district's curriculum for sex-related education and shall establish a protocol to be used by districts to provide continuity in teaching the approved curriculum in a manner that is age, grade and developmentally appropriate.

(2) Abstinence-only education shall remain the state standard for any sex-related education taught in the public schools. For purposes of this section, abstinence-only education includes any type of instruction or program which, at an appropriate age and grade:

(a) Teaches the social, psychological and health gains to be realized by abstaining from sexual activity, and the likely negative psychological and physical effects of not abstaining;

(b) Teaches the harmful consequences to the child, the child's parents and society that bearing children out of wedlock is likely to produce, including the health, educational, financial and other difficulties the child and his or her parents are likely to face, as well as the inappropriateness of the social and economic burden placed on others;

(c) Teaches that unwanted sexual advances are irresponsible and teaches how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances;

(d) Teaches that abstinence from sexual activity before marriage, and fidelity within marriage, is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases and related health problems. The instruction or program may include a discussion on condoms or contraceptives, but only if that discussion includes a factual presentation of the risks and failure rates of those contraceptives. In no case shall the instruction or program include any demonstration of how condoms or other contraceptives are applied;

(e) Teaches the current state law related to sexual conduct, including forcible rape, statutory rape, paternity establishment, child support and homosexual activity; and

(f) Teaches that a mutually faithful, monogamous relationship in the context of marriage is the only appropriate setting for sexual intercourse.

(3) A program or instruction on sex-related education need not include every component listed in subsection (2) of this section for abstinence-only education. However, no program or instruction under an abstinence-only curriculum may include anything that contradicts the excluded components. For purposes of this section, abstinence-plus education includes every component listed under subsection (2) of this section that is age and grade appropriate, in addition to any other programmatic or instructional component approved by the department, which shall not include instruction and demonstrations on the application and use of condoms. Abstinence-plus education may discuss other contraceptives, the nature, causes and effects of sexually transmitted diseases, or the prevention of sexually transmitted diseases, including HIV/AIDS, along with a factual presentation of the risks and failure rates.

(4) Any course containing sex-related education offered in the public schools shall include instruction in either abstinence-only or abstinence-plus education.

(5) Local school districts, in their discretion, may host programs designed to teach parents how to discuss abstinence with their children.

(6) There shall be no effort in either an abstinence-only or an abstinence-plus curriculum to teach that abortion can be used to prevent the birth of a baby.

(7) At all times when sex-related education is discussed or taught, boys and girls shall be separated according to gender into different classrooms, sex-related education instruction may not be conducted when boys and girls are in the company of any students of the opposite gender.

(8) This section shall stand repealed on July 1, 2021.

**HISTORY: Laws, 1998, ch. 510, § 1; Laws, 2011, ch. 430, § 1; Laws, 2016, ch. 389, § 1, eff from and after July 1, 2016.**

**Cross References —** Applicability of the provisions of subsections (2) and (4) of this section to charter schools, see § 37-28-45.

### § 37-13-173. Notice to parents; right to request inclusion of children in program of instruction; review of materials.

Each school providing instruction or any other presentation on human sexuality in the classroom, assembly or other official setting shall be required to provide no less than one (1) week's written notice thereof to the parents of children in such programs of instruction. The written notice must inform the parents of their right to request the inclusion of their child for such instruction or presentation. The notice also must inform the parents of the right, and the appropriate process, to review the curriculum and all materials to be used in the lesson or presentation. Upon the request of any parent, the school shall excuse the parent's child from such instruction or presentation, without detriment to the student.

**HISTORY: Laws, 1998, ch. 510, § 2; Laws, 2011, ch. 430, § 3, eff from and after July 1, 2011.**

**Cross References** — Applicability of the provisions of this section to charter schools, see § 37-28-45.

### § 37-13-175. Application of Sections 37-13-171 and 37-13-173 to biological science courses.

Nothing in Sections 37-13-171 and 37-13-173 shall apply to any biological science course or curriculum.

**HISTORY: Laws, 1998, ch. 510, § 3, eff from and after July 1, 1998.**

## CHARACTER EDUCATION

Sec.
37-13-181. Character education programs in public schools authorized.
37-13-183. Assessment of students' understanding of character traits.
37-13-185. Review of proposed character education programs by State Board of Education.

### § 37-13-181. Character education programs in public schools authorized.

The local school boards of the public school districts, in their discretion, may develop and implement, at the beginning of the 1999-2000 school year, a comprehensive program for character education in Grades K-12. The definition of the character traits chosen by the school district for implementation shall reflect and be in keeping with both the spirit and the letter of the following founding documents: the Mississippi Constitution of 1890; the Constitution of the United States of America; the Declaration of Independence; and state and federal law. A public school may not define or teach character or character traits in any manner that might promote or encourage students to participate in conduct that would violate any state or federal law.

**HISTORY: Laws, 1999, ch. 458, § 1, eff from and after July 1, 1999.**

**Cross References** — Review of proposed character education programs by State Board of Education, see § 37-13-185.

### § 37-13-183. Assessment of students' understanding of character traits.

Assessment of the students' understanding of the character traits chosen to be taught in public school shall be limited to and must reflect the material taught in the classroom. Students shall not be evaluated in any way as to whether or not the students evidence a specific character trait in their own lives.

**HISTORY: Laws, 1999, ch. 458, § 2, eff from and after July 1, 1999.**

### § 37-13-185. Review of proposed character education programs by State Board of Education.

The State Board of Education shall review the proposed character education programs of the individual school districts to ascertain if the programs comply with the criteria set forth in Section 37-13-181. Review of the programs shall not exceed a time period of sixty (60) days. If a review extends beyond this time period, the proposal will be deemed in compliance with the law.

If the proposed character education program is rejected, the State Board of Education shall set forth in writing the specific areas of objection. These objections must be based on and limited to the following criteria: the definition of the character traits chosen by the school district for implementation shall reflect and be in keeping with both the spirit and letter of our founding documents; no instruction shall promote or encourage participation in any conduct that would violate existing state or federal law; and no student shall be assessed or evaluated as to whether or not the student evidences a specific character trait in his or her own life.

**HISTORY: Laws, 1999, ch. 458, § 3, eff from and after July 1, 1999.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of the first paragraph. The words "Section 1 of this act" were changed to "Section 37-13-181." The Joint Committee ratified the correction at its May 16, 2002, meeting.

## CIVIL RIGHTS AND HUMAN RIGHTS EDUCATION

| Sec. | |
|---|---|
| 37-13-191. | Legislative intent. |
| 37-13-193. | Civil rights and human rights education in public schools authorized; guidelines to be implemented. |
| 37-13-195. | Mississippi Civil Rights Education Commission created; membership; terms of members; rules, regulations, standards and policies; funding. |

## § 37-13-191. Legislative intent.

Understanding the important role the Civil Rights Movement had on the State of Mississippi and understanding the importance of teaching Mississippi's children all of our history, it is the goal of this Legislature to provide meaningful support to this most important endeavor. Mississippi's central role in the civil rights struggle needs to be formalized and taught as a beacon of hope for all of our citizens.

**HISTORY: Laws, 2006, ch. 436, § 1, eff from and after July 1, 2006.**

## § 37-13-193. Civil rights and human rights education in public schools authorized; guidelines to be implemented.

The State Board of Education may make civil rights and human rights education a part of the K-12 curriculum of instruction in Mississippi public schools. The State Department of Education shall work with the Mississippi Civil Rights Education Commission established in Section 37-13-195 in implementing these five (5) guidelines: (a) provide assistance and advice to K-12 schools with respect to the Civil Rights Movement and human rights education and awareness programs; (b) survey and catalog the extent to which civil rights and human rights education exists in state curricula; (c) inventory civil rights memorials, exhibits and resources that could be used in classrooms and other educational programs; (d) compile a list of volunteers who are willing to share their knowledge and experiences concerning the struggle for civil rights; (e) prepare reports for the Governor and the State Legislature on the inclusion of civil rights studies into the educational systems of the state.

**HISTORY: Laws, 2006, ch. 436, § 2, eff from and after July 1, 2006.**

**Cross References —** Mississippi Civil Rights Education Commission established, see § 37-13-195.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## § 37-13-195. Mississippi Civil Rights Education Commission created; membership; terms of members; rules, regulations, standards and policies; funding.

(1) There is created the Mississippi Civil Rights Education Commission. The commission shall be assigned to the Office of the Secretary of State for administrative purposes only. The commission shall provide or assist education officials and other organizations with information, coordination and modification of courses or programs that include the Civil Rights Movement, and will carry out the specific responsibilities set forth in Section 37-13-193. In completing this task, the commission may act as a liaison with various bodies, including the United States Congress, the State Legislature, Teaching for Change, the William Winter Institute for Racial Reconciliation, as well as other national and international agencies. The commission shall consist of no

more than fifteen (15) members, eleven (11) positions of which will be voluntary, to serve with a term of three (3) years on a rotating basis. These positions will be filled by application submitted to a joint committee formed by the William Winter Institute at the University of Mississippi, Tougaloo College, the Oral History Project at the University of Southern Mississippi and Jackson State University. Each of these four (4) entities shall remain permanent members of this commission, with representatives to be appointed by the President or Chancellor of the appropriate institution.

(2) The members of the commission shall be residents of this state and shall be appointed with due regard for broad geographic representation.

(3) The commission shall have a chairperson who shall be designated by the State Superintendent of Education from the commission membership for a term of four (4) years and eight (8) members of the commission shall constitute a quorum for the transaction of the business of the commission.

(4) The Mississippi Commission on Civil Rights Education shall adopt rules and regulations and set standards and policies for the organization, operation, management, budgeting and programs of the commission.

(5) The commission may apply for and receive gifts, grants and donations from any public or private sources, including federal and private foundation grants. Members of the commission may not be compensated for the performance of their duties except from nonstate funds that are specifically available therefor.

**HISTORY: Laws, 2006, ch. 436, § 3, eff from and after July 1, 2006.**

# CHAPTER 14.

# MARY KIRKPATRICK HASKELL-MARY SPRAYBERRY PUBLIC SCHOOL NURSE ACT OF 2007

Sec.
37-14-1. Short title.
37-14-3. Office of Healthy Schools of state department of education to administer school nurse program; transfer of School Nurse Intervention Program to Office of Healthy Schools; responsibilities of program nurses; duties of Office of Healthy Schools.
37-14-5. Waiver or grant for Medicaid coverage of services of public school nurses.
37-14-7. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Program Fund established; expenditure of funds limited to specific purposes.

## § 37-14-1. Short title.

This chapter shall be known as the Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007.

**HISTORY: Laws, 2007, ch. 573, § 1, eff from and after July 1, 2007.**

## § 37-14-3. Office of Healthy Schools of state department of education to administer school nurse program; transfer of School Nurse Intervention Program to Office of Healthy Schools; responsibilities of program nurses; duties of Office of Healthy Schools.

(1) The State Department of Education is designated as the state agency responsible for the administration and supervision of the school nurse program as an education and wellness curriculum in the public schools of the State of Mississippi. The public school nurse program administered by the State Department of Education shall be known and may be cited as the "Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Program." It is the intent of the Legislature that all funds made available to the State Department of Education for the purpose of employing school nurses shall be administered by the State Department of Education.

(2) The State Department of Education, through the Office of Healthy Schools, shall develop standards, procedures and criteria for the public school nurse programs in Kindergarten through Grade 12. The Office of Healthy Schools of the State Department of Education shall assume the responsibility for promoting a statewide school nurse program designed to prepare local school districts to incorporate the school program into their local educational programs.

(3) From and after July 1, 2007, the School Nurse Intervention Program administered and funded by the State Department of Health shall be transferred to the Office of Healthy Schools of the State Department of Education.

Any administrative personnel employed by the State Department of Health for the administration of school nurses under the School Nurse Intervention Program may be considered for employment by the Office of Healthy Schools of the State Department of Education for the purpose of coordinating the employment of school nurses in the school districts. Any administrative personnel formerly employed by the Partnership for a Healthy Mississippi, Inc., for the administration of school nurses in the public schools may be considered for employment by the Office of Healthy Schools of the State Department of Education for the purpose of coordinating the employment of school nurses in the school districts. All records and unexpended balances of accounts in the School Nurse Intervention Program relating to the employment of school nurses shall be transferred to the Office of Healthy Schools in the State Department of Education in accordance with the transfer of responsibility under this chapter.

(4) The nurses in the Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Program shall have the following specific responsibilities:

(a) Serve as the coordinator of the health services program and provide nursing care;

(b) Provide health education to students;

(c) Implement activities to promote health and prevent tobacco, alcohol and substance use and abuse;

(d) Identify health and safety concerns in the school environment and promote a nurturing social environment;

(e) Administer medications and help students manage their health problems;

(f) Support healthy food services programs;

(g) Promote healthy physical education, sports policies and practices;

(h) Promote dropout prevention programs; and

(i) Participate in allied health programs to introduce students to health careers.

(5) The Office of Healthy Schools of the State Department of Education shall provide resources to all public school nurses so that those schools with school nurses will be prepared to provide health education in Mississippi schools and support the Mississippi Comprehensive Health Framework, Mississippi Physical Education Framework, Wellness Policy, coordinated approach to school health, and other resources required by the State Board of Education.

(6) In administering the Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Program, the Office of Healthy Schools of the State Department of Education shall perform the following duties:

(a) Execute any contracts, agreements or other documents with any governmental agency or any person, corporation, association, partnership or other organization or entity that are necessary to accomplish the purposes of this chapter;

(b) Receive grants or any other contributions made to the State Board of Education to be used for specific purposes related to the goals of this chapter;

(c) Submit to the State Auditor any financial records that are necessary for the Auditor to perform an annual audit of the commission as required by law;

(d) Adopt any rules or regulations that are necessary to carry out the purposes of this chapter;

(e) Develop criteria to measure the effectiveness of a school nurse;

(f) Communicate to superintendents and principals how to maximize the effectiveness of a public school nurse;

(g) Develop recommended salary structure for school districts to use when hiring a school nurse;

(h) Communicate to superintendents, principals and other appropriate school officials regarding the statutes and regulations prohibiting the use of tobacco by school personnel on school property and at school events, and to monitor the effectiveness of this ban;

(i) Implement policies to reduce unnecessary paperwork by public school nurses; and

(j) Take any other actions that are necessary to carry out the purposes of this chapter.

**HISTORY: Laws, 2007, ch. 573, § 2; Laws, 2011, ch. 442, § 14, eff from and after July 1, 2011.**

**Editor's Notes** — The School Nurse Intervention Program, referred to in this section, is codified as §§ 41-79-1 through 41-79-5.

## § 37-14-5. Waiver or grant for Medicaid coverage of services of public school nurses.

The Division of Medicaid shall cooperate with the State Department of Education to develop and seek approval from the Centers for Medicare and Medicaid Services (CMS) for a waiver or grant to cover the services of public school nurses, as allowed by federal law. The division is also authorized to explore other options for administering and providing services under this program, including, but not limited to, matching any available federal funds. The Department of Education shall place particular emphasis on reducing unnecessary paperwork by public school nurses.

**HISTORY: Laws, 2007, ch. 573, § 3, eff from and after July 1, 2007.**

## § 37-14-7. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Program Fund established; expenditure of funds limited to specific purposes.

(1) There is established in the State Treasury a special fund to be known as the Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Program Fund, which shall be comprised of the funds specified in subsection (2) of this section and any other funds that are authorized or required to be deposited into the special fund.

(2) The Legislature shall annually appropriate the funds in the special fund to the Office of Healthy Schools of the State Department of Education, which shall expend the funds solely for the purposes specified in Section 37-14-3. None of the funds in the special fund may be transferred to any other fund or appropriated or expended for any other purpose.

(3) All income from the investment of the funds in the special fund shall be credited to the account of the special fund. Any funds in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

**HISTORY: Laws, 2007, ch. 573, § 4, eff from and after July 1, 2007.**

# CHAPTER 15.

# PUBLIC SCHOOLS; RECORDS, ENROLLMENT AND TRANSFER OF PUPILS

Sec.

37-15-1. Maintenance of permanent records and cumulative folders for pupils; requirement of certified birth certificate or other evidence of age.
37-15-2. Storage of permanent records.
37-15-3. Storage of cumulative folders; access to records; disposition of records upon transfer of student between schools; destruction of records.
37-15-4. Maintenance of records relating to district-wide reports.
37-15-5. Repealed.
37-15-6. Central reporting system for information concerning expulsions from public schools; access to information.
37-15-7. Maintenance of continuing census.
37-15-8. Schedule for disposal of records.
37-15-9. Requirements for enrollment of children in public schools.
37-15-10. Administration of provisions relating to records.
37-15-11. Requirement that parent, legal guardian, or legal custodian accompany child applying for enrollment.
37-15-13. Assignment of child enrolling in public schools to particular school or attendance center generally.
37-15-15. Factors to be considered in making assignments.
37-15-17. Review or reconsideration by school board of assignment of child.
37-15-19. Repealed.
37-15-21. Judicial review of assignment of child.
37-15-23 through 37-15-27. Repealed.
37-15-29. Minor child to attend school in district of residence; exceptions.
37-15-30. Pupil's compliance with residency requirement in district if parent is transferred to military installation within the state while on active duty; electronic application for enrollment and course registration; proof of residence.
37-15-31. Transfer of students between school districts generally.
37-15-33. Testing of transfer students; assignment of students.
37-15-35. Segregation or integration of schools by reason of race, color, or national origin.
37-15-37. Repealed.
37-15-38. Dual enrollment programs for dual high school and postsecondary credit; Mississippi Works Dual Enrollment-Dual Credit Option Program.
37-15-39. Legislative purpose; definitions; school districts to offer pre-advanced placement courses; funding to be provided for sophomores to take nationally recognized aptitude test for advanced placement classes; minimum number of advanced placement courses to be offered.

## § 37-15-1. Maintenance of permanent records and cumulative folders for pupils; requirement of certified birth certificate or other evidence of age.

The State Board of Education shall prepare and provide necessary forms for keeping permanent records and cumulative folders for each pupil in the public schools, including charter schools, of the state. In the permanent record and cumulative folders, the teachers and principals shall keep information concerning the pupil's date of birth, as verified by the documentation authorized in this section, record of attendance, grades and withdrawal from the school, including the date of any expulsion from the school and a description of the student's act or behavior resulting in the expulsion. The records also shall contain information pertaining to immunization and such other information as the State Board of Education may prescribe. The cumulative folder, in addition to that information maintained in the permanent records, also shall contain such other information as the State Board of Education shall prescribe. It shall be the responsibility of the person in charge of each school to enforce the requirement for evidence of the age of each pupil before enrollment. If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(a) A certified birth certificate;

(b) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by a parent, grandparent or custodian;

(c) An insurance policy on the child's life which has been in force for at least two (2) years;

(d) A bona fide contemporary Bible record of the child's birth accompanied by an affidavit sworn to by the parent, grandparent or custodian;

(e) A passport or certificate of arrival in the United States showing the age of the child;

(f) A transcript of record of age shown in the child's school record of at least four (4) years prior to application, stating date of birth; or

(g) If none of these evidences can be produced, an affidavit of age sworn to by a parent, grandparent or custodian. Any child enrolling in kindergarten or Grade 1 shall present the required evidence of age upon enrollment. Any child in Grades 2 through 12 not in compliance at the end of sixty (60) days from enrollment shall be suspended until in compliance.

**HISTORY: Codes, 1942, § 6225-01; Laws, 1953, Ex Sess, ch. 24, § 1; Laws, 1974, ch. 451, § 1; Laws, 1980, ch. 424, § 1; Laws, 1989, ch. 511, § 1; Laws, 1990, ch. 535, § 1; Laws, 1995, ch. 480, § 1; Laws, 2002, ch. 557, § 1; Laws, 2003, ch. 416, § 6; Laws, 2007, ch. 416, § 7; Laws, 2008, ch. 382, § 1; Laws, 2013, ch. 497, § 61, eff from and after July 1, 2013.**

**Cross References** — Duty of state superintendent of education to determine number of educable children in several school districts, see § 37-3-11.

Powers of boards of trustees of school districts to require vaccination of school children, see § 37-7-301.

Storage of permanent records, see § 37-15-2.

Prohibition against destroying a permanent record of a student, see § 37-15-3.

Requirement for continuing census, see § 37-15-7.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

Immunization required for school attendance, see § 41-23-37.

### OPINIONS OF THE ATTORNEY GENERAL

Information concerning a student's record of attendance, among other items, must be maintained in a student's permanent record and cumulative folder; thus, any disciplinary actions affecting attendance, such as expulsions and suspensions, should be included in the student's permanent record and cumulative folder and, accordingly, attendance at an alternative school should be duly noted. Bordis, IV, Feb. 9, 2001, A.G. Op. #2000-0710.

### RESEARCH REFERENCES

**Law Reviews.**

Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-15-2. Storage of permanent records.

The permanent record provided for in Section 37-15-1 shall be kept, while it is active, in the attendance center office in a fire resistant container.

The permanent record shall be considered active: (a) if the student is enrolled in the school; or (b) if he has withdrawn or has been expelled and the students of the class of which he was a member shall not have reached the time of graduation.

At the point of the student's graduation or at the time when the student would normally have graduated had he not withdrawn or been expelled from school, the student's permanent record shall become a part of the permanent binder in the central fire resistant depository or stored digitally as designated and provided by the school board of the school district, or, as an alternative method, the records may be maintained in fire resistant storage at the school last attended by the student. The permanent binding and preservation of the inactive records shall be the duty of the superintendent of the school district who shall maintain a central depository of the records.

**HISTORY: Laws, 1974, ch. 451 § 2; Laws, 1980, ch. 424, § 2; Laws, 1986, ch. 492, § 88; Laws, 1995, ch. 480, § 2; Laws, 2014, ch. 442, § 3, eff from and after passage (approved March 26, 2014).**

**Cross References** — Prohibition against destroying a permanent record of a student, see § 37-15-3.

## § 37-15-3. Storage of cumulative folders; access to records; disposition of records upon transfer of student between schools; destruction of records.

Such cumulative folders as are provided for in Section 37-15-1 shall be kept in the school wherein the pupils are in attendance. Both the permanent records and the cumulative folders shall be available to school officials, including teachers within the school district who have been determined by the school district to have legitimate educational interests. In no case, however, shall such records be available to the general public. Transcripts of courses and grades may be furnished when requested by the parent or guardian or eligible pupil as prescribed in the Family Educational Rights and Privacy Act of 1974, as amended, 20 USCS Section 1232g. Such records shall be kept for each pupil throughout his entire public school enrollment period. In the event a pupil transfers to a public school, including a charter school, then the cumulative folder shall be furnished to the head of the school to which the pupil transfers; if a pupil transfers to a private school, then a copy of the cumulative folder shall be furnished to the head of the school to which the pupil transfers. The permanent record shall be kept permanently by the school district from which the pupil transferred.

At no time may a permanent record of a student be destroyed, but cumulative folders may be destroyed by order of the school board of the school district in not less than five (5) years after the permanent record of the pupil has become inactive and has been transferred to the central depository of the district. Provided, however, that where a school district makes complete copies of inactive permanent records on photographic film, microfilm, or any other acceptable form of medium for storage which may be reproduced as needed, such permanent records may be destroyed after the photographic film or microfilm copy has been stored in the central depository of the district.

**HISTORY: Codes, 1942, § 6225-02; Laws, 1953, Ex Sess, ch. 24, § 2; Laws, 1954, ch. 266; Laws, 1974, ch. 451, § 3; Laws, 1980, ch. 424, § 3; Laws, 1986, ch. 492, § 89; Laws, 1995, ch. 480, § 3; Laws, 2009, ch. 444, § 1; Laws, 2013, ch. 497, § 62, eff from and after July 1, 2013.**

**Joint Legislative Committee Note.--** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in the fourth sentence of the first paragraph by substituting “20 USCS Section 1232g” for “20 USCS Section 1232.” The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Cross References —** Storage of permanent records, see § 37-15-2.

Records that are in the process of being audited or that are the basis of litigation cannot be destroyed until 12 months after final completion of the audit or litigation, see § 37-15-8.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## § 37-15-4. Maintenance of records relating to district-wide reports.

The school board of every school district, as created and empowered by law, shall keep and preserve permanently a copy of all district-wide reports required by the State Board of Education to be filed on an annual basis.

Copies of those district-wide reports required by the State Board of Education on less than an annual basis may be destroyed after five (5) years upon approval of the school board of the school district.

All supporting documents necessary to compile such district-wide reports, except as delineated in Section 37-15-8 may be destroyed after three (3) years following the academic year for which the report was made upon approval of the school board of the school district.

**HISTORY: Laws, 1974, ch. 451 § 4; Laws, 1986, ch. 492, § 90, eff from and after July 1, 1987.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Records that are in the process of being audited or that are the basis of litigation cannot be destroyed until 12 months after final completion of the audit or litigation, see § 37-15-8.

## § 37-15-5. Repealed.

Repealed by Laws, 1986, ch. 492, § 97, eff from and after July 1, 1987. [Codes, 1942, § 6225-05; Laws, 1953, Ex Sess, ch. 24, § 5]

**Editor's Notes —** Former § 37-15-5 provided that pay certificates would be held up and not issued until the records were in good order and properly filled out.

## § 37-15-6. Central reporting system for information concerning expulsions from public schools; access to information.

For the purpose of providing notice to public and private school officials, both within and outside the boundaries of the state, of the expulsion of any public school student, the State Department of Education may develop a central reporting system for maintaining information concerning each expulsion from a public school. In establishing and maintaining the reporting system, the department may require each school district and charter school to report, within a certain period of time after an expulsion, as established by the department, information such as the following:

(a) The name of the student expelled;
(b) The date the student was expelled;
(c) The age of the student at the time of the expulsion;
(d) The school from which the student was expelled;
(e) The reason for the expulsion, including a detailed description of the student's act or acts;
(f) The duration of the period of expulsion, if not indefinite; and
(g) Any other information that the department deems necessary for school officials in a public or private school, where a student is seeking enrollment, to determine whether or not a student should be denied enrollment based upon a previous expulsion.

Any information maintained by the department under the authority of this section shall be strictly confidential. The information shall be available to school officials at a public or private school only upon their request and only when a student seeks enrollment or admission to that school. In no case shall the information be available to the general public.

**HISTORY: Laws, 1995, ch. 480, § 4; Laws, 2013, ch. 497, § 63, eff from and after July 1, 2013.**

**Cross References** — Expulsion of student possessing controlled substance or weapon or committing violent act, see § 37-11-18.

Expulsion of habitually disruptive students, see § 37-11-18.1.

Suspension or expulsion of student damaging school property, see § 37-11-19.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## § 37-15-7. Maintenance of continuing census.

In addition to the cumulative records provided for in Section 37-15-1, there shall be kept a continuing census of all children below the age of nineteen within each school district. Such record shall be kept as a part of the permanent office records of the superintendent of the district.

**HISTORY: Codes, 1942, § 6225-04; Laws, 1953, Ex Sess, ch. 24, § 4, eff from and after July 1, 1954.**

## § 37-15-8. Schedule for disposal of records.

The superintendent of the school district shall have the authority, with the approval of the school board of the school district spread upon its minutes, to dispose of the following records:

(a) After five (5) years:

(1) Bank statements;

(2) Cancelled warrants and pay certificates;

(3) School board paid bills;

(4) Bids received, either accepted or rejected, for supplies, materials, equipment and construction;

(5) Depository receipt warrants;

(6) School board claims dockets, where claims are recorded on the minutes of the board;

(7) Original of school board's orders after such orders have been recorded in the minute book;

(8) Cancelled bonds and coupons;

(9) Tax collector's reports of tax collection to superintendent of schools;

(10) Transportation records.

(b) After three (3) years:

(1) Teacher contracts, computed from the expiration date thereof;

(2) Bus purchase documents;

(3) Teachers' registers, principals' reports and other evidence necessary to prepare the reports to the State Board of Education.

(c) After period to be set by the State Board of Education such other documents of a temporary or transitory nature as the State Board of Education by regulation shall designate.

Notwithstanding any of the provisions of Sections 37-15-1 through 37-15-4, 37-15-8 and 37-15-10 to the contrary, no records which are in the process of being audited by the State Department of Audit, or which are the basis of litigation, shall be destroyed until at least twelve (12) months after final completion of said audits and litigation.

**HISTORY: Laws, 1974, ch. 451 § 5; Laws, 1986, ch. 492, § 91; Laws, 2004, ch. 357, § 8, eff from and after July 1, 2004.**

**Cross References** — Maintenance of records relating to district-wide reports, see § 37-15-4.

## § 37-15-9. Requirements for enrollment of children in public schools.

(1) Except as provided in subsection (2) and subject to the provisions of subsection (3) of this section, no child shall be enrolled or admitted to any kindergarten which is a part of a public school during any school year unless such child will reach his fifth birthday on or before September 1 of said school year, and no child shall be enrolled or admitted to the first grade in any public school during any school year unless such child will reach his sixth birthday on or before September 1 of said school year. No pupil shall be permanently enrolled in a public school in the State of Mississippi who formerly was enrolled in another public or private school within the state until the cumulative record of the pupil shall have been received from the school from which he transferred. Should such record have become lost or destroyed, then it shall be the duty of the superintendent or principal of the school where the pupil last attended school to initiate a new record.

(2) Subject to the provisions of subsection (3) of this section, any child who transfers from an out-of-state public or private school in which that state's law provides for a first-grade or kindergarten enrollment date subsequent to September 1, shall be allowed to enroll in the public schools of Mississippi, at the same grade level as their prior out-of-state enrollment, if:

(a) The parent, legal guardian or custodian of such child was a legal resident of the state from which the child is transferring;

(b) The out-of-state school from which the child is transferring is duly accredited by that state's appropriate accrediting authority;

(c) Such child was legally enrolled in a public or private school for a minimum of four (4) weeks in the previous state; and

(d) The superintendent of schools in the applicable Mississippi school district or the principal of a charter school, as the case may be, has determined that the child was making satisfactory educational progress in the previous state.

(3) When any child applies for admission or enrollment in any public school in the state, the parent, guardian or child, in the absence of an accompanying parent or guardian, shall indicate on the school registration form if the enrolling child has been expelled from any public or private school or is currently a party to an expulsion proceeding. If it is determined from the child's cumulative record or application for admission or enrollment that the child has been expelled, the school district or charter school may deny the student admission and enrollment until the superintendent of the school, or his designee, or principal of the charter school, as the case may be, has reviewed the child's cumulative record and determined that the child has

participated in successful rehabilitative efforts including, but not limited to, progress in an alternative school or similar program. If the child is a party to an expulsion proceeding, the child may be admitted to a public school pending final disposition of the expulsion proceeding. If the expulsion proceeding results in the expulsion of the child, the public school may revoke such admission to school. If the child was expelled or is a party to an expulsion proceeding for an act involving violence, weapons, alcohol, illegal drugs or other activity that may result in expulsion, the school district or charter school shall not be required to grant admission or enrollment to the child before one (1) calendar year after the date of the expulsion.

**HISTORY: Codes, 1942, § 6225-03; Laws, 1953, Ex Sess, ch. 24, § 3; Laws, 1976, ch. 390, § 1; Laws, 1986, ch. 464; Laws, 1987, ch. 315; Laws, 1994, ch. 607, § 19; Laws, 2003, ch. 397, § 2; Laws, 2013, ch. 497, § 64; Laws, 2014, ch. 442, § 4; Laws, 2014, ch. 491, § 10, eff from and after passage (approved April 15, 2014).**

**Joint Legislative Committee Note —** Section 4 of ch. 442, Laws of 2014, effective from and after passage (approved March 26, 2014), amended this section. Section 10 of ch. 491, Laws of 2014, effective from and after passage (approved April 15, 2014), also amended this section. As set out above, this section reflects the language of Section 10 of ch. 491, Laws of 2014, which contains language that specifically provides that it supersedes § 37-15-9 as amended by Chapter 442, Laws of 2014.

**Editor's Notes —** Laws of 2011, ch. 409, § 1, provides:

"SECTION 1. (1) The State Department of Education shall conduct a survey of each public school district in this state in order to determine the feasibility of allowing children who attain five (5) years of age on or before July 1 to enroll in public school kindergarten, as opposed to the existing requirement that a child attain the age of five (5) years on or before September 1 of the school year in which the child is to be enrolled in a full-day public school kindergarten. The survey should assess student preparedness, transition and adaptation to the school and learning environment, effectiveness of instruction as applied to student retention, and any other component the department deems necessary to make an accurate determination of the feasibility of a July 1 enrollment age.

"(2) The department shall submit a report of the findings of the survey conducted under subsection (1) of this section to the Legislature for consideration by January 1, 2012."

**Cross References —** Expulsion of student possessing controlled substance or weapon or committing violent act, see § 37-11-18.

Expulsion of habitually disruptive students, see § 37-11-18.1.

Suspension or expulsion of student damaging school property, see § 37-11-19.

Assignment of child enrolling in public schools to particular school or attendance center generally, see § 37-15-13.

Factors to be considered in making assignments, see § 37-15-15.

Review or reconsideration by school board of assignment of child, see § 37-15-17.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## JUDICIAL DECISIONS

**1. In general.**

State residency requirement for admission to tuition-free public schools does not violate equal protection clause of of Fourteenth Amendment. Martinez v. Bynum, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 1983 U.S. LEXIS 158 (U.S. 1983).

### OPINIONS OF THE ATTORNEY GENERAL

The exception to the age of enrollment provided at subsection (2) of Section 37-15-9 applies only to those children who meet all of the subsection's qualifications and who are making a lateral transfer directly from an out-of-state school. Fox, August 14, 1995, A.G. Op. #95-0550.

In regard to determining the proper residency of a child for school attendance purposes, a child may reside with an adult other than his parent or guardian, but should not do so strictly for school attendance purposes. Eskridge, Sept. 5, 2003, A.G. Op. 03-0699.

Education is not a fundamental right, and the proper test in determining whether a student's due process rights have been violated by a disciplinary action removing them from the school setting is whether such action was rationally related to legitimate governmental interests. Fleming, July 15, 2005, A.G. Op. 05-0320.

### RESEARCH REFERENCES

**ALR.**

Power of school authorities to set minimum or maximum age requirements for pupils. 78 A.L.R.2d 1021.

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 268, 269 et seq.

13C Am. Jur. Legal Forms 2d, Parent and Child §§ 191.2 et seq. (proof of birthdate).

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Form 174 (complaint, petition, or declaration by guardian ad litem or next friend to enjoin denial of admission of minor to schools); Form 178 (complaint, petition, or declaration for damages for refusal to admit minor resident to school located in district of minor's residency).

**CJS.**

78A C.J.S., Schools and School Districts §§ 962 et seq.

## § 37-15-10. Administration of provisions relating to records.

The state board of education shall administer Sections 37-15-1 through 37-15-4, 37-15-8 and this section and issue such additional standards and regulations as might be necessary in carrying out this duty.

**HISTORY: Laws, 1974, ch. 451 § 6, eff from and after passage (approved March 26, 1974).**

## § 37-15-11. Requirement that parent, legal guardian, or legal custodian accompany child applying for enrollment.

Whenever any minor child seeks or applies to enroll or gain entrance to any public school in this state, and the child is not accompanied by an adult or is accompanied by an adult who is not the child's parent, guardian, if a legal guardian has been appointed for the child, or legal custodian, the school official or officials or teacher to whom the child applies or reports for enrollment or admission may delay consideration of the enrollment or enlistment of the minor child and require the child's parent, legal guardian or legal custodian to accompany the child and apply for enrollment and admission into the school for and on behalf of the minor child.

**HISTORY: Codes, 1942, § 6225-03.5; Laws, 1960, ch. 314; Laws, 2002, ch. 397, § 1, eff from and after July 1, 2002.**

**Cross References —** Applicability of the provisions of this section to charter schools, see § 37-28-45.

## § 37-15-13. Assignment of child enrolling in public schools to particular school or attendance center generally.

When any child qualified under the requirements of Section 37-15-9 shall apply or present himself for enrollment in or admission to the public schools of any school district of this state, the school board of such school district shall have the power and authority to designate the particular school or attendance center of the district in which such child shall be enrolled and which he shall attend; no enrollment of a child in a school shall be final or permanent until such designation shall be made by said school board. No child shall be entitled to attend any school or attendance center except that to which he has been assigned by the school board; however, the principal of a school or superintendent of the district may, in proper cases, permit a child to attend a school temporarily until a permanent assignment is made by the school board.

**HISTORY: Codes, 1942, § 6334-01; Laws, 1954, ch. 260, § 1; Laws, 1986, ch. 492, § 92; Laws, 1994, ch. 607, § 20, eff from and after July 2, 1994.**

**Cross References —** Requirements for enrollment of children in public schools, see § 37-15-9.

Factors to be considered in making assignments, see § 37-15-15.

Review or reconsideration by school board of assignment of child, see § 37-15-17.

Judicial review of assignment of child, see § 37-15-21.

Transfer of students between school districts generally, see § 37-15-31.

Transfer or assignment of school children to another school or district when schools are closed pursuant to governor's order, see § 37-65-9.

Transfer or assignment of school children to another school or district when schools are closed pursuant to order of district board of trustees, see § 37-65-107.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Relationship to other laws.
3. Transfers.

**1. In general.**

Although this section [Code 1942, § 6334-01] provides that the trustees may assign a pupil who appears or presents himself for enrollment, this assignment must be made on an individual basis and not en masse. Board of Educ. v. Wilburn, 223 So. 2d 665, 1969 Miss. LEXIS 1289 (Miss. 1969), overruled, In re Petition of 2,952 Registered Voters, etc., 574 So. 2d 619, 1990 Miss. LEXIS 814 (Miss. 1990).

**2. Relationship to other laws.**

These sections [Code 1942, §§ 6334-01 et seq.] should be read in connection with Code 1942, § 6248-07, and the two laws so interpreted as to give effect to the legislative intent expressed in Code 1942, § 6334-07. Board of Education v. State Educational Finance Com., 243 Miss. 782, 138 So. 2d 912, 1962 Miss. LEXIS 408 (Miss. 1962).

Chapter 260, Laws of 1954 [Code 1942, §§ 6334-01 et seq.], did not apply to a situation where students living in a school district organized under the Laws of 1953, Ex. Sess, Ch 12 [Code 1942, §§ 6228-01 et seq.], were permitted to attend school in another school district without the consent and approval of the board of trustees of the district wherein the students resided. Hinze v. Winston County Board of Education, 233 Miss. 867, 103 So. 2d 353, 1958 Miss. LEXIS 450 (Miss. 1958).

**3. Transfers.**

Refusal of county board of education to transfer pupil assigned to one school to another, held not arbitrary or capricious. County Board of Education v. Smith, 239 Miss. 53, 121 So. 2d 139, 1960 Miss. LEXIS 266 (Miss. 1960).

## OPINIONS OF THE ATTORNEY GENERAL

A school district has the inherent power to make rules and regulations regarding the placement of its students in the appropriate grade. This authority includes making appropriate placements of a child into a particular grade by way of either assignment, promotion or retention of a student. Note: Johnson, Dec. 3, 2002, A.G. Op. 02-0450 is modified. Storey, July 18, 2003, A.G. Op. 03-0342.

A school board makes the appropriate school assignment for children of non-instructional and non-certificated employees who are residents of the school district. Smith, July 30, 2004, A.G. Op. 04-0327.

## RESEARCH REFERENCES

**CJS.**

78A C.J.S., Schools and School Districts § 991.

## § 37-15-15. Factors to be considered in making assignments.

In making assignments of children to schools or attendance centers, the school board shall take into consideration the educational needs and welfare of the child involved, the welfare and best interest of all the pupils attending the school or schools involved, the availability of school facilities, sanitary conditions and facilities at the school or schools involved, health and moral factors at the school or schools, and in the community involved, and all other factors which the school board may consider pertinent, relevant or material in their effect on the welfare and best interest of the school district and the particular school or schools involved. All such assignments shall be on an individual basis as to the particular child involved and, in making such assignment, the school board shall not be limited or circumscribed by the boundaries of any attendance areas which may have been established by such board.

**HISTORY: Codes, 1942, § 6334-02; Laws, 1954, ch. 260, § 2; Laws, 1986, ch. 492, § 93, eff from and after July 1, 1987.**

**Cross References —** Assignment of child enrolling in public schools to particular school or attendance center generally, see § 37-15-13.

Review or reconsideration by school board of assignment of child, see § 37-15-17.

Judicial review of assignment of child, see § 37-15-21.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Sibling assignments.

**1. In general.**

Refusal of county board of education to transfer pupil assigned to one school to another, held not arbitrary or capricious. County Board of Education v. Smith, 239 Miss. 53, 121 So. 2d 139, 1960 Miss. LEXIS 266 (Miss. 1960).

**2. Sibling assignments.**

The defendant school district did not violate the statute in refusing to order the transfer of a student from his current elementary school to school his older sister attended on the ground that no space was available at the latter school at the time of the request; however, such a transfer was required when space became available. Pascagoula Mun. Separate Sch. Dist. v. Barton, 776 So. 2d 683, 2001 Miss. LEXIS 21 (Miss. 2001).

### OPINIONS OF THE ATTORNEY GENERAL

In filling classroom space, which the exception of any student falling within the federal definition of special population, the school board should follow the statutory mandate and balance the listed factors. Foreman, Oct. 3, 1991, A.G. Op. #91-0677.

A school board has the authority to retain a student in kindergarten for an additional year if the district deems that placement of the student in the first grade would not be the most appropriate educational placement. Johnson, Dec. 3, 2002, A.G. Op. #02-0450.

A school district has the inherent power to make rules and regulations regarding the placement of its students in the appropriate grade. This authority includes making appropriate placements of a child into a particular grade by way of either assignment, promotion or retention of a student. Note: Johnson, Dec. 3, 2002, A.G. Op. 02-0450 is modified. Storey, July 18, 2003, A.G. Op. 03-0342.

### RESEARCH REFERENCES

**CJS.**

78A C.J.S., Schools and School Districts § 991.

## § 37-15-17. Review or reconsideration by school board of assignment of child.

If the parent, guardian or other person having custody of any child shall feel aggrieved by the assignment of such child to a school or attendance center by the school board, then such parent, guardian or other person may, at any time within thirty (30) days after such assignment, make application in writing to the school board for a review or reconsideration of such assignment. Upon receiving any such application, the school board shall set a time and place for the hearing thereof which time shall be not more than fifteen (15) days after the regular meeting of said board next succeeding the date of the filing of said application. At the time and place so fixed, the person filing such application shall have the right to appear and present evidence in support of said application. After hearing said evidence, the school board shall determine whether said application is well taken and supported by the evidence and shall enter an order either affirming its previous action or modifying or changing same as said school board shall find proper.

**HISTORY: Codes, 1942, § 6334-03; Laws, 1954, ch. 260, § 3; Laws, 1986, ch. 492, § 94, eff from and after July 1, 1987.**

**Cross References** — Factors to be considered in making assignments, see § 37-15-15.

Judicial review of assignment of child, see § 37-15-21.

### JUDICIAL DECISIONS

**1. In general.**

A parent objecting to the assignment of a child to an attendance center in the county of residence may apply to the trustees for a review, and appeal from their determination to the county board of education, and thence to the circuit court. Board of Education v. State Educational Finance Com., 243 Miss. 782, 138 So. 2d 912, 1962 Miss. LEXIS 408 (Miss. 1962).

### OPINIONS OF THE ATTORNEY GENERAL

A school district has the inherent power to make rules and regulations regarding the placement of its students in the appropriate grade. This authority includes making appropriate placements of a child into a particular grade by way of either assignment, promotion or retention of a student. Note: Johnson, Dec. 3, 2002, A.G. Op. 02-0450 is modified. Storey, July 18, 2003, A.G. Op. 03-0342.

### RESEARCH REFERENCES

**Am. Jur.**

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Form 192 (complaint, petition, or declaration to enjoin transfer of students from one school district to another); Form 194 (judgment or decree enjoining transfer of students from one school district to another).

## § 37-15-19. Repealed.

Repealed by Laws, 1986, ch. 492, § 97, eff from and after July 1, 1987. [Codes, 1942, § 6334-04; Laws, 1954, ch. 260, § 4]

**Editor's Notes** — Former § 37-15-19 provided for appeals of review or reconsideration of assignments of children to schools to the county board of education.

## § 37-15-21. Judicial review of assignment of child.

If any parent, guardian or other person having custody of any child affected by the assignment of such child to a school or attendance center by the school board shall feel aggrieved at the order of the school board provided for in Section 37-15-17, such person may, at any time within thirty (30) days from the date of such order, appeal therefrom by filing a petition for appeal in the circuit court of the county in which the school district involved is located. Upon the filing of such petition for an appeal, process shall be issued for and served upon the president of the school board of the school district involved. Upon being served with process, it shall be the duty of the school board to transmit promptly to the court a certified copy of the entire record of the proceedings as shown by the file of the school board. From the judgment of the circuit court, an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from other judgments of such court.

**HISTORY: Codes, 1942, § 6334-05; Laws, 1954, ch. 260, § 5; Laws, 1986, ch. 492, § 95; Laws, 1987, ch. 307, § 15, eff from and after passage (approved March 3, 1987).**

**Cross References** — Factors to be considered in making assignments, see § 37-15-15.

Review or reconsideration by school board of assignment of child, see § 37-15-17.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Nature of appeal.
3. Issues reviewable.
4. Record on appeal.
5. Miscellaneous.

**1. In general.**

The former provisions of this section [Code 1942, § 6334-05] providing for trial de novo before a jury on an appeal in the circuit court were unconstitutional and invalid as a violation of the provisions relating to separation of powers. Loftin v. George County Board of Education, 183 So. 2d 621, 1966 Miss. LEXIS 1426 (Miss. 1966).

**2. Nature of appeal.**

Trustees of a school district appealing from an order of the county board of education to the circuit court are not there entitled to a trial de novo before a jury. Loftin v. George County Board of Education, 183 So. 2d 621, 1966 Miss. LEXIS 1426 (Miss. 1966).

**3. Issues reviewable.**

Courts on appeal from a determination of a county board of education are limited to the question whether the action of the board is supported by substantial evidence or is arbitrary or capricious, or transcends its power, or violates some statutory or constitutional right of an interested party. County Board of Education v. Smith, 239 Miss. 53, 121 So. 2d 139, 1960 Miss. LEXIS 266 (Miss. 1960).

**4. Record on appeal.**

It is the duty of the person appealing from an order of the county board of education to take the necessary steps to preserve the record of the facts or circumstances upon which he intends to base a reversal of the order in the circuit court. Loftin v. George County Board of Education, 183 So. 2d 621, 1966 Miss. LEXIS 1426 (Miss. 1966).

This section [Code 1942, § 6334-05] is sufficiently broad to allow making a stenographic record of the testimony and the certification of a transcript of such testimony by the county board of education to the circuit court, or to authorize the county board of education to allow a bill of exceptions. Loftin v. George County Board of Education, 183 So. 2d 621, 1966 Miss. LEXIS 1426 (Miss. 1966).

**5. Miscellaneous.**

A pupil cannot transfer from the school district of one county to the school district of another county without the approval of the board of trustees of the school district of his residence or the approval of the county school board of his residence, and no appeal will lie to the state educational finance commission for a hearing de novo from the ruling of the county school board denying the application to transfer except in 2 situations provided by this section [Code 1942 § 6248-07]; the appeal, otherwise, is to the Circuit Court as provided by Code 1942 § 6334-05. Tally v. Scott County, 282 So. 2d 217, 1973 Miss. LEXIS 1214 (Miss. 1973).

### OPINIONS OF THE ATTORNEY GENERAL

A school district has the inherent power to make rules and regulations regarding the placement of its students in the appropriate grade. This authority includes making appropriate placements of a child into a particular grade by way of either assignment, promotion or retention of a student. Note: Johnson, Dec. 3, 2002, A.G. Op. 02-0450 is modified. Storey, July 18, 2003, A.G. Op. 03-0342.

## §§ 37-15-23 through 37-15-27. Repealed.

Repealed by Laws, 1986, ch. 492, § 97, eff from and after July 1, 1987.

§§ 37-15-23 through 37-15-27. [Codes, 1942, §§ 6334-06, 6334-07; Laws, 1954, ch. 260, §§ 6, 7]

**Editor's Notes —** Former §§ 37-15-23 through 37-15-27 provided special provisions governing appeals in county-wide school districts, line districts and municipal separate school districts, respectively.

## § 37-15-29. Minor child to attend school in district of residence; exceptions.

(1) Except as provided in subsections (2), (3), (4) and (5) of this section, no minor child may enroll in or attend any school except in the school district of his residence, unless such child be lawfully transferred from the school district of his residence to a school in another school district in accord with the statutes of this state now in effect or which may be hereafter enacted.

(2) Those children whose parent(s) or legal guardian(s) are instructional personnel or certificated employees of a school district may at such employee's discretion enroll and attend the school or schools of their parent's or legal guardian's employment regardless of the residence of the child.

(3) No child shall be required to be transported in excess of thirty (30) miles on a school bus from his or her home to school, or in excess of thirty (30) miles from school to his or her home, if there is another school in an adjacent school district located on a shorter school bus transportation route by the nearest traveled road. Those children residing in such geographical situations may, at the discretion of their parent(s) or legal guardian(s), enroll and attend the nearer school, regardless of the residence of the child. In the event the parent or legal guardian of such child and the school board are unable to agree on the school bus mileage required to transport the child from his or her home to school, an appeal shall lie to the State Board of Education, or its designee, whose decision shall be final. The school districts involved in the appeal shall provide the Mississippi Department of Education with any school bus route information requested, including riding the buses as necessary, in order to measure the bus routes in question, as needed by the State Board of Education in considering the appeal.

(4) Those children lawfully transferred from the school district of his residence to a school in another school district prior to July 1, 1992, may, at the discretion of their parent(s) or legal guardian(s), continue to enroll and attend

school in the transferee school district. Provided further, that the brother(s) and sister(s) of said children lawfully transferred prior to July 1, 1992, may also, at the discretion of their parent(s) or legal guardian(s), enroll and attend school in the transferee school district.

(5) Those children whose parent(s) or legal guardian(s) are active members of the United States Armed Forces or civilian military personnel and reside on a military base, may, at the discretion of their parent(s) or legal guardian(s), enroll and attend the school district of their parent's or legal guardian's choosing, regardless of the residence of the child, provided the school district where the student resides or in an adjacent school district and the parent's or guardian's choice of school district does not violate the provision of subsection (3) of this section prohibiting the transportation of students in excess of thirty (30) miles.

**HISTORY: Codes, 1942, § 6334-11; Laws, 1960, ch. 315; Laws, 1989, ch. 508, § 1; Laws, 1990, ch. 565, § 1; Laws, 1991, ch. 349, § 1; Laws, 1992, ch. 410, § 1; Laws, 2010, ch. 483, § 8; Laws, 2013, ch. 473, § 1, eff from and after July 1, 2013.**

**Editor's Notes —** Laws of 1989, ch. 508, § 4, provides as follows:

"SECTION 4. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

Laws of 1990, ch. 565, § 4, provides as follows:

"SECTION 4. It is the intent of the Legislature that the provisions of this act shall be applicable only to the extent possible within the scope of any federal court consent judgment or any federal court order imposed upon any school district within the state. The provisions of this act shall be in effect and shall be enforceable only within the scope of such federal court order."

Laws of 1991, ch. 349, § 4, provides as follows:

"SECTION 4. It is the intent of the Legislature that the provisions of this act shall be applicable only to the extent possible within the scope of any federal court consent judgment or any federal court order imposed upon any school district within the state. The provisions of this act shall be in effect and shall be enforceable only within the scope of such federal court order."

**Cross References —** Assignment of child enrolling in public schools to particular school or attendance center generally, see § 37-15-13.

Requirement that school board accept transfer student meeting conditions of this section, see § 37-15-31.

## JUDICIAL DECISIONS

**1. In general.**

Federal District Court could not order consolidation of county school district and city school district based on allegations that student transfer statutes were being used to thwart desegregation of districts where disparity in black and white enrollment in districts was not shown to be caused by or significantly affected by interdistrict transfers. United States v. Mississippi, 719 F. Supp. 1364, 1989 U.S. Dist. LEXIS 10051 (S.D. Miss. 1989), aff'd, 921 F.2d 604, 1991 U.S. App. LEXIS 806 (5th Cir. Miss. 1991).

## OPINIONS OF THE ATTORNEY GENERAL

While transfer of child whose parent(s) or legal guardian(s) is instructional personnel or certificated employee is automatic upon request, school board will make appropriate school assignment when child is, by reason of age or grade, ineligible to attend school or schools of parent's or guardian's assignment. Johnson, Sept. 19, 1990, A.G. Op. #90-0535.

"Instructional personnel" includes assistant reading instructors, assistant teachers and teacher's aides, as they assist pupils in instruction under supervision of qualified teacher. Piazza, August 26, 1992, A.G. Op. #92-0642.

School district cannot refuse to allow child of instructional or certificated employee to enroll in district of employment even if parent or legal guardian is out of state resident. Musgrove, Oct. 1, 1992, A.G. Op. #92-0696.

Under Sections 37-15-29 and 37-15-31, there is no power or authority for the State Board of Education to hear an appeal of any other question arising in transfer cases. Burnham, June 14, 1995, A.G. Op. #95-0358.

If a child is not a resident of the district and is not admitted to a school in the district pursuant to a valid transfer agreement, then that child should be disenrolled from the school. The district should consider the educational welfare and needs of the child in deciding when to terminate the student's enrollment. Necaise, Dec. 20, 2002, A.G. Op. #02-0672.

A transfer pursuant to subsection (3) of this section remains effective only if the student is over thirty (30) miles away from his school. Consequently, a school board has the authority to deny a request for transfer if the student does not meet the exception. However, a parent may file a petition with the school board requesting a transfer to another school district pursuant to § 37-15-31(1)(a). Pope, May 14, 2004, A.G. Op. 04-0177.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 271-274.

**CJS.**

78A C.J.S., Schools and School Districts §§ 989, 991, 992.

## § 37-15-30. Pupil's compliance with residency requirement in district if parent is transferred to military installation within the state while on active duty; electronic application for enrollment and course registration; proof of residence.

(1) Notwithstanding any provision of law, a pupil complies with the residency requirements for school attendance in a school district if the parent of the pupil is transferred to, or is pending transfer to, a military installation within this state while on active military duty pursuant to an official military order.

(2) A school district shall accept an application for enrollment and course registration by electronic means for a pupil who meets the requirements prescribed in subsection (1) of this section, including enrollment in a specific school or program within the school district.

(3) The parent of a pupil who meets the requirement prescribed in

subsection (1) of this section shall provide proof of residence to the school district within ten (10) days after the published arrival date provided on official documentation. The parent may use the address of any of the following as proof of residence for the purposes of this subsection:

(a) A temporary on-base billeting facility.

(b) A purchased or leased home or apartment.

(c) Any federal government housing or off-base military housing, including off-base military housing that may be provided through a public-private venture.

(4) For the purposes of this section:

(a) "Active military duty" means full-time military duty status in the active uniformed service of the United States, including members of the National Guard and the State Military Reserve on active duty orders.

(b) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship or other installation under the jurisdiction of the United States Department of Defense or the United States Coast Guard.

**HISTORY: Laws, 2019, ch. 395, § 1, eff from and after July 1, 2019.**

## § 37-15-31. Transfer of students between school districts generally.

(1)(a) Except as provided in subsections (2) through (5) of this section, upon the petition in writing of a parent or guardian resident of the school district of an individual student filed or lodged with the president or secretary of the school board of a school district in which the pupil has been enrolled or is qualified to be enrolled as a student under Section 37-15-9, or upon the aforesaid petition or the initiative of the school board of a school district as to the transfer of a grade or grades, individual students living in one school district or a grade or grades of a school within the districts may be legally transferred to another school district, by the mutual consent of the school boards of all school districts concerned, which consent must be given in writing and spread upon the minutes of such boards.

(b) The school board of the transferring school district to which such petition may be addressed shall act thereon not later than its next regular meeting subsequent to the filing or lodging of the petition, and a failure to act within that time shall constitute a rejection of such request. The school board of the other school district involved (the transferee board) shall act on such request for transfer as soon as possible after the transferor board shall have approved or rejected such transfer and no later than the next regular meeting of the transferee board, and a failure of such transferee board to act within such time shall constitute a rejection of such request. If such a transfer is approved by the transferee board, then such decision shall be final. If such a transfer should be refused by the school board of either school district, then such decision shall be final.

(c) Any legal guardianship formed for the purpose of establishing residency for school district attendance purposes shall not be recognized by the affected school board.

(2)(a) Upon the petition in writing of any parent or guardian who is a resident of Mississippi and is an instructional or licensed employee of a school district, but not a resident of such district, the school board of the employer school district shall consent to the transfer of such employee's dependent school-age children to its district and shall spread the same upon the minutes of the board. Upon the petition in writing of any parent or guardian who is not a resident of Mississippi and who is an instructional or licensed employee of a school district in Mississippi, the school board of the employer school district shall consent to the transfer of such employee's dependent school-age children to its district and shall spread the same upon the minutes of the board.

(b) The school board of any school district, in its discretion, may adopt a uniform policy to allow the enrollment and attendance of the dependent children of noninstructional and nonlicensed employees, who are residents of Mississippi but are not residents of their district. Such policy shall be based upon the employment needs of the district, implemented according to job classification groups and renewed each school year.

(c) The employer transferee school district shall notify in writing the school district from which the pupil or pupils are transferring, and the school board of the transferor school district shall spread the same upon its minutes.

(d) Any such agreement by school boards for the legal transfer of a student shall include a provision providing for the transportation of the student. In the absence of such a provision the responsibility for transporting the student to the transferee school district shall be that of the parent or guardian.

(e) Any school district which accepts a student under the provisions of this subsection shall not assess any tuition fees upon such transferring student in accordance with the provisions of Section 37-19-27.

(3) Upon the petition in writing of any parent or legal guardian of a school-age child who is a resident of an adjacent school district residing in the geographical situation described in Section 37-15-29(3), the school board of the school district operating the school located in closer proximity to the residence of the child shall consent to the transfer of the child to its district, and shall spread the same upon the minutes of the board. Any such agreement by school boards for the legal transfer of a student under this subsection shall include a provision for the transportation of the student by either the transferor or the transferee school district. In the event that either the school board of the transferee or the transferor school district shall object to the transfer, it shall have the right to appeal to the State Board of Education whose decision shall be final. However, if the school boards agreeing on the legal transfer of any student shall fail to agree on which district shall provide transportation, the responsibility for transporting the student to the transferee school district shall be that of the parent or guardian.

(4) Upon the petition in writing of any parent or legal guardian of a school-age child who was lawfully transferred to another school district prior to July 1, 1992, as described in Section 37-15-29(4), the school board of the transferee school district shall consent to the transfer of such child and the transfer of any school-age brother and sister of such child to its district, and shall spread the same upon the minutes of the board.

(5)(a) If the board of trustees of a municipal separate school district with added territory does not have a member who is a resident of the added territory outside the corporate limits, upon the petition in writing of any parent or legal guardian of a school-age child who is a resident of the added territory outside the corporate limits, the board of trustees of the municipal separate school district and the school board of the school district adjacent to the added territory shall consent to the transfer of the child from the municipal separate school district to the adjacent school district. The agreement must be spread upon the minutes of the board of trustees of the municipal separate school district and the school board of the adjacent school district. The agreement must provide for the transportation of the student. In the absence of such a provision, the parent or legal guardian shall be responsible for transporting the student to the adjacent school district. Any school district that accepts a student under this subsection may not assess any tuition fees against the transferring student.

(b) Before September 1 of each year, the board of trustees of the municipal separate school district shall certify to the State Department of Education the number of students in the added territory of the municipal separate school district who are transferred to the adjacent school district under this subsection. The municipal separate school district also shall certify the total number of students in the school district residing in the added territory plus the number of those students who are transferred to the adjacent school district. Based upon these figures, the department shall calculate the percentage of the total number of students in the added territory who are transferred to the adjacent school district and shall certify this percentage to the levying authority for the municipal separate school district. The levying authority shall remit to the school board of the adjacent school district, from the proceeds of the ad valorem taxes collected for the support of the municipal separate school district from the added territory of the municipal separate school district, an amount equal to the percentage of the total number of students in the added territory who are transferred to the adjacent school district.

**HISTORY: Codes, 1942, § 6248-07; Laws, 1953, Ex Sess, ch. 14, § 7; Laws, 1954, Ex Sess, ch. 25, §§ 1, 2 (¶¶ 1, 2); Laws, 1960, ch. 296, §§ 1, 2; Laws, 1962, ch. 357, § 1; Laws, 1986, ch. 492, § 96; Laws, 1987, ch. 307, § 16; Laws, 1988, ch. 466, § 1; Laws, 1989, ch. 508, § 2; Laws, 1990, ch. 565, § 2; Laws, 1991, ch. 349, § 2; Laws, 1992, ch. 410, § 2; Laws, 1993, ch. 602, § 3; Laws, 1994, ch. 597, § 1; Laws, 1994, ch. 607, § 21; Laws, 2001, ch. 454, § 1, eff from and after July 1, 2001.**

**Editor's Notes —** Section 37-19-27 referred to in (2)(e) was repealed by Laws of 1997, ch. 612, § 30, effective from and after July 1, 2002.

**Cross References —** Abolition, reorganization or alteration of school district generally, see § 37-7-101 et seq.

Requirements for enrollment of children in public schools, see § 37-15-9.

Minor child to attend school in district of residence with certain exceptions, see § 37-15-29.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Constitutionality.
3. Relationship to other laws.
4. Appeals.

**1. In general.**

Federal District Court could not order consolidation of county school district and city school district based on allegations that student transfer statutes were being used to thwart desegregation of districts where disparity in black and white enrollment in districts was not shown to be caused by or significantly affected by interdistrict transfers. United States v. Mississippi, 719 F. Supp. 1364, 1989 U.S. Dist. LEXIS 10051 (S.D. Miss. 1989), aff'd, 921 F.2d 604, 1991 U.S. App. LEXIS 806 (5th Cir. Miss. 1991).

Students who live in one school district organized under Ch 12, Laws of 1953, Ex Sess [Code 1942, § 6328-01 et seq.], may not attend school in another school district with the consent and approval of the board of trustees of the district wherein such students reside. Hinze v. Winston County Board of Education, 233 Miss. 867, 103 So. 2d 353, 1958 Miss. LEXIS 450 (Miss. 1958).

**2. Constitutionality.**

This section [Code 1942, § 6248-07] does not violate the constitutional prohibition of special legislation. Board of Education v. State Educational Finance Com., 243 Miss. 782, 138 So. 2d 912, 1962 Miss. LEXIS 408 (Miss. 1962).

**3. Relationship to other laws.**

This section [Code 1942, § 6248-07] is to be read in connection with Code 1942, §§ 6334-01 et seq. and the laws are to be so interpreted as to give effect to the legislative intent expressed in Code 1942, § 6334-07. Board of Education v. State Educational Finance Com., 243 Miss. 782, 138 So. 2d 912, 1962 Miss. LEXIS 408 (Miss. 1962).

**4. Appeals.**

A pupil cannot transfer from the school district of one county to the school district of another county without the approval of the board of trustees of the school district of his residence or the approval of the county school board of his residence, and no appeal will lie to the state educational finance commission for a hearing de novo from the ruling of the county school board denying the application to transfer except in the two situations provided by this section [Code 1942 § 6248-07]; the appeal, otherwise, is to the Circuit Court as provided by Code § 6334-05. Tally v. Scott County, 282 So. 2d 217, 1973 Miss. LEXIS 1214 (Miss. 1973).

Where it was stipulated that the Morton Attendance Center in Scott County was more than 2 miles from the county line and pupils residing in Smith County had only attended the Scott County school for approximately 13 years, no appeal lay under the third paragraph of this section [Code 1942 § 6248-07] to the state educational finance commission from the ruling of the Smith County school board denying an application to transfer. Tally v. Scott County, 282 So. 2d 217, 1973 Miss. LEXIS 1214 (Miss. 1973).

Where Smith County pupils were unable to show that they had the necessary consent of the board of trustees of their school district to transfer to Scott County since that board was one and the same as the Smith County board of education, they were unable to meet the requirements of the sixth paragraph of this section [Code 1942 § 6248-07], which required the filing or lodging "with the president or secretary of such board notice of the approval of such transfer by the board of trustees," and failing in such, the conditions precedent to an appeal to the state educational finance commission for a hearing de novo from the ruling of the school board denying application to transfer were not met. Tally v. Scott County, 282 So. 2d 217, 1973 Miss. LEXIS 1214 (Miss. 1973).

This section [Code 1942, § 6248-07] does not operate to repeal by implication the right of appeal to the courts conferred by Code 1942, § 6846-12. Board of Education v. State Educational Finance Com., 243 Miss. 782, 138 So. 2d 912, 1962 Miss. LEXIS 408 (Miss. 1962).

## OPINIONS OF THE ATTORNEY GENERAL

Under Sections 37-15-29 and 37-15-31, there is no power or authority for the State Board of Education to hear an appeal of any other question arising in transfer cases. Burnham, June 14, 1995, A.G. Op. #95-0358.

There is distinction in this section between full-time and part-time employees; therefore, if the school board makes a factual determination that substitute bus drivers are working under an employment agreement similar to that afforded full-time bus drivers, then substitute bus drivers may be considered school district employees for the purpose of the privileges afforded by this section. Lowrey, January 29, 1999, A.G. Op. #98-0771.

As there is no specific time limitation set forth in the statute, the transfer of a student is effective until the school board of either school district, or the county board of education if applicable, revokes its consent; however, it is important to note that in the absence of express statutory authority, a school board cannot enter into a transfer contract with another school board for a period of time that would deprive a subsequent board of its rights and powers since any such contract would be voidable at the election of the subsequent board. Swanson, Feb. 16, 2001, A.G. Op. #2000-0766.

A school district is authorized to accept tuition from nonresident students pursuant to the provisions of this section and Section 37-151-93; however, nothing in the law requires a district to do so. Necaise, Dec. 20, 2002, A.G. Op. #02-0672.

A school district has the discretion to adopt a policy allowing children of non-instructional and non-licensed employees residing outside the district to attend school in the district. Smith, July 30, 2004, A.G. Op. 04-0327.

A school board makes the appropriate school assignment for children of non-instructional and non-certificated employees who are residents of the school district. Smith, July 30, 2004, A.G. Op. 04-0327.

Transfer of students between school districts is a purely discretionary function of the school boards. Jones, July 22, 2005, A.G. Op. 05-0311.

A school district has discretion to adopt a policy to allow enrollment and attendance of children of a cafeteria worker, insurance clerk, payroll clerk, bus driver and crossing guard who reside outside the district but within the state. Bordis, Oct. 6, 2006, A.G. Op. 06-0489.

## RESEARCH REFERENCES

**Am. Jur.**

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Form 192 (complaint, petition, or declaration to enjoin transfer of students from one school district to another); Form 194 (judgment or decree enjoining transfer of students from one school district to another).

**CJS.**

78A C.J.S., Schools and School Districts § 992.

## § 37-15-33. Testing of transfer students; assignment of students.

All students seeking to transfer from any school, public, private or homeschool within or outside of the boundaries of the State of Mississippi, to a public school within the state may be required to take a test to determine the grade and class to which the pupil shall be assigned at the time of pupil transfer.

The administrative head of each public school shall administer the test or tests to such pupil or pupils as shall apply for transfer to such public school. Such test or tests shall be administered within thirty (30) days after the filing of each such application for transfer. Notice of the giving of such test shall be given the applicant not less than five (5) days prior to the date of the administration of such test.

No transfer of a pupil shall be effected until the test has been given and the pupil is assigned according to the grade and class for which the test shows he is best suited. No pupil shall be assigned to a grade and class more than three (3) grades above or below the grade or class that the pupil would have been assigned to had the pupil remained in the school from which the transfer is being made. Pending the administration of the test herein provided for and its grading and an assignment based thereon the superintendent of the school district or the attendance center principal to which the pupil seeks admission may assign the pupil temporarily to a grade and class comparable to that in which the pupil would have been had the pupil continued in the school from which the transfer was being made.

If any student is transferred or reassigned within the school district by order of the board of trustees of that school district as designated by law of the State of Mississippi and not at his own request, the requirement of that pupil's taking the standardized test shall be waived. Likewise, if a pupil shall transfer from one school district to another school district in the manner provided and required by the laws of the State of Mississippi, the requirement of such pupil taking the standardized test shall be waived.

**HISTORY: Codes, 1942, § 6225-11; Laws, 1964, 1st Ex Sess, ch. 26, §§ 1-5; Laws, 1988, ch. 466, § 2; Laws, 2011, ch. 422, § 1, eff from and after July 1, 2011.**

### RESEARCH REFERENCES

**CJS.**

78A C.J.S., Schools and School Districts
§ 992.

## § 37-15-35. Segregation or integration of schools by reason of race, color, or national origin.

No person shall be assigned to or by, or restricted from or to, any group, area, school, institution or other political subdivision of the State of Mississippi on the account of race, color, or national origin. There shall be no governmentally enforced segregation by race, color or national origin and there shall be no governmentally enforced integration by reason of race, color or national origin.

**HISTORY: Codes, 1942, § 6334-31; Laws, 1970, ch. 374, § 1, eff from and after passage (approved April 3, 1970).**

**Cross References —** Assignment of child enrolling in public schools to particular school or attendance center generally, see § 37-15-13.

Factors to be considered in making assignments, see § 37-15-15.

Review or reconsideration by school board of assignment of child, see § 37-15-17.

Judicial review of assignment of child, see § 37-15-21.

## JUDICIAL DECISIONS

**1. In general.**

Federal Court of Appeals applied overly stringent standard in determining whether to dissolve prior injunctive decree imposing desegregation plan for city's public schools; finding by District Court that school district was being operated in compliance with commands of Fourteenth Amendment's equal protection clause and that it was unlikely that school board would return to its former ways, would be finding that purposes of desegregation litigation had been fully achieved and would thus justify dissolution of desegregation decree without additional requirement for school board to show "grievous wrong" evoked by new and unforeseen conditions. Board of Educ. v. Dowell, 498 U.S. 237, 111 S. Ct. 630, 112 L. Ed. 2d 715, 1991 U.S. LEXIS 484 (U.S. 1991).

## RESEARCH REFERENCES

**Am. Jur.**

22 Am. Jur. Pl & Pr Forms (Rev), Schools, Form 201 (petition or application in federal court – for writ of mandamus – to compel school authorities to submit plan of desegregation); Form 202 (complaint in federal court – class action as to public school discrimination – failure of system to take affirmative action to achieve racial integration – for order to implement plan to end racial discrimination); Forms 203-205 (segregation in schools).

**Law Reviews.**

Desegregation and Education. 58 Miss. L. J. 241, Fall 1988.

**Lawyers' Edition.**

Racial discrimination in education. 24 L. Ed. 2d 765.

Supreme Court's views as to propriety or purported remedies for unconstitutional racial segregation of public elementary or secondary schools. 118 L. Ed. 2d 629.

## § 37-15-37. Repealed.

Repealed by Laws, 2011, ch. 511, § 4, effective from and after passage (Approved April 26, 2011.)

§ 37-15-37. [Laws, 2004, ch. 563, § 2, eff from and after July 1, 2004.]

**Editor's Notes —** Former § 37-15-37 provided authority to local school districts and the Board of Trustees of State Institutions of Higher Learning to establish dual enrollment programs allowing certain high school students to enroll in state institutions of higher learning. For present similar provisions, see § 37-15-38.

## § 37-15-38. Dual enrollment programs for dual high school and postsecondary credit; Mississippi Works Dual Enrollment-Dual Credit Option Program.

(1) The following phrases have the meanings ascribed in this section unless the context clearly requires otherwise:

(a) A dual enrolled student is a student who is enrolled in a community or junior college or state institution of higher learning while enrolled in high school.

(b) A dual credit student is a student who is enrolled in a community or junior college or state institution of higher learning while enrolled in high school and who is receiving high school and college credit for postsecondary coursework.

(2) A local school board, the Board of Trustees of State Institutions of Higher Learning and the Mississippi Community College Board shall establish a dual enrollment system under which students in the school district who meet the prescribed criteria of this section may be enrolled in a postsecondary institution in Mississippi while they are still in school.

(3) **Dual credit eligibility.** Before credits earned by a qualified high school student from a community or junior college or state institution of higher learning may be transferred to the student's home school district, the student must be properly enrolled in a dual enrollment program.

(4) **Admission criteria for dual enrollment in community and junior college or university programs.** The Mississippi Community College Board and the Board of Trustees of State Institutions of Higher Learning may recommend to the State Board of Education admission criteria for dual enrollment programs under which high school students may enroll at a community or junior college or university while they are still attending high school and enrolled in high school courses. Students may be admitted to enroll in community or junior college courses under the dual enrollment programs if they meet that individual institution's stated dual enrollment admission requirements.

(5) **Tuition and cost responsibility.** Tuition and costs for university-level courses and community and junior college courses offered under a dual enrollment program may be paid for by the postsecondary institution, the local school district, the parents or legal guardians of the student, or by grants, foundations or other private or public sources. Payment for tuition and any other costs must be made directly to the credit-granting institution.

(6) **Transportation responsibility.** Any transportation required by a student to participate in the dual enrollment program is the responsibility of the parent, custodian or legal guardian of the student. Transportation costs may be paid from any available public or private sources, including the local school district.

(7) **School district average daily attendance credit.** When dually enrolled, the student may be counted, for adequate education program funding purposes, in the average daily attendance of the public school district in which the student attends high school.

(8) **High school student transcript transfer requirements.** Grades and college credits earned by a student admitted to a dual credit program must be recorded on the high school student record and on the college transcript at the university or community or junior college where the student attends classes. The transcript of the university or community or junior college coursework may be released to another institution or applied toward college graduation requirements.

(9) **Determining factor of prerequisites for dual enrollment courses.** Each university and community or junior college participating in a dual enrollment program shall determine course prerequisites. Course prerequisites shall be the same for dual enrolled students as for regularly enrolled students at that university or community or junior college.

(10) **Process for determining articulation of curriculum between high school, university, and community and junior college courses.** All dual credit courses must meet the standards established at the postsecondary level. Postsecondary level developmental courses may not be considered as meeting the requirements of the dual credit program. Dual credit memorandum of understandings must be established between each postsecondary institution and the school district implementing a dual credit program.

(11) [Deleted]

(12) **Eligible courses for dual credit programs.** Courses eligible for dual credit include, but are not necessarily limited to, foreign languages, advanced math courses, advanced science courses, performing arts, advanced business and technology, and career and technical courses. Distance Learning Collaborative Program courses approved under Section 37-67-1 shall be fully eligible for dual credit. All courses being considered for dual credit must receive unconditional approval from the superintendent of the local school district and the chief instructional officer at the participating community or junior college or university in order for college credit to be awarded. A university or community or junior college shall make the final decision on what courses are eligible for semester hour credits.

(13) **High school Carnegie unit equivalency.** One (1) three-hour university or community or junior college course is equal to one (1) high school Carnegie unit.

(14) **Course alignment.** The universities, community and junior colleges and the State Department of Education shall periodically review their respective policies and assess the place of dual credit courses within the context of their traditional offerings.

(15) **Maximum dual credits allowed.** It is the intent of the dual enrollment program to make it possible for every eligible student who desires to earn a semester's worth of college credit in high school to do so. A qualified dually enrolled high school student must be allowed to earn an unlimited number of college or university credits for dual credit.

(16) **Dual credit program allowances.** A student may be granted credit delivered through the following means:

(a) Examination preparation taught at a high school by a qualified teacher. A student may receive credit at the secondary level after completion of an approved course and passing the standard examination, such as an Advanced Placement or International Baccalaureate course through which a high school student is allowed CLEP credit by making a three (3) or higher on the end-of-course examination.

(b) College or university courses taught at a high school or designated postsecondary site by a qualified teacher who is an employee of the school district and approved as an instructor by the collaborating college or university.

(c) College or university courses taught at a college, university or high school by an instructor employed by the college or university and approved by the collaborating school district.

(d) Online courses of any public university, community or junior college in Mississippi.

(17) **Qualifications of dual credit instructors.** A dual credit academic instructor must meet the requirements set forth by the regional accrediting association (Southern Association of College and Schools). University and community and junior college personnel have the sole authority in the selection of dual credit instructors.

A dual credit career and technical education instructor must meet the requirements set forth by the Mississippi Community College Board in the qualifications manual for postsecondary career and technical personnel.

(18) **Guidance on local agreements.** The Chief Academic Officer of the State Board of Trustees of State Institutions of Higher Learning and the Chief Instructional Officers of the Mississippi Community College Board and the State Department of Education, working collaboratively, shall develop a template to be used by the individual community and junior colleges and institutions of higher learning for consistent implementation of the dual enrollment program throughout the State of Mississippi.

(19) **Mississippi Works Dual Enrollment-Dual Credit Option.** A local school board and the local community colleges board shall establish a Mississippi Works Dual Enrollment-Dual Credit Option Program under which potential or recent student dropouts may dually enroll in their home school and a local community college in a dual credit program consisting of high school completion coursework and a community college credential, certificate or degree program. Students completing the dual enrollment-credit option may obtain their high school diploma while obtaining a community college credential, certificate or degree. The Mississippi Department of Employment Security shall assist students who have successfully completed the Mississippi Works Dual Enrollment-Dual Credit Option in securing a job upon the application of the student or the participating school or community college. The Mississippi Works Dual Enrollment-Dual Credit Option Program will be implemented statewide in the 2012-2013 school year and thereafter. The State Board of Education, local school board and the local community college board shall establish criteria for the Dual Enrollment-Dual Credit Program. Students enrolled in the program will not be eligible to participate in interscholastic sports or other extracurricular activities at the home school district. Tuition

and costs for community college courses offered under the Dual Enrollment-Dual Credit Program shall not be charged to the student, parents or legal guardians. When dually enrolled, the student shall be counted for adequate education program funding purposes, in the average daily attendance of the public school district in which the student attends high school, as provided in Section 37-151-7(1)(a). Any transportation required by the student to participate in the Dual Enrollment-Dual Credit Program is the responsibility of the parent or legal guardian of the student, and transportation costs may be paid from any available public or private sources, including the local school district. Grades and college credits earned by a student admitted to this Dual Enrollment-Dual Credit Program shall be recorded on the high school student record and on the college transcript at the community college and high school where the student attends classes. The transcript of the community college coursework may be released to another institution or applied toward college graduation requirements. Any course that is required for subject area testing as a requirement for graduation from a public school in Mississippi is eligible for dual credit, and courses eligible for dual credit shall also include career, technical and degree program courses. All courses eligible for dual credit shall be approved by the superintendent of the local school district and the chief instructional officer at the participating community college in order for college credit to be awarded. A community college shall make the final decision on what courses are eligible for semester hour credits and the local school superintendent, subject to approval by the Mississippi Department of Education, shall make the final decision on the transfer of college courses credited to the student's high school transcript.

**HISTORY: Laws, 2006, ch. 346, § 2; Laws, 2006, ch. 504, § 11; Laws, 2010, ch. 381, § 2; Laws, 2011, ch. 516, § 1; Laws, 2012, ch. 521, § 1; Laws, 2014, ch. 397, § 17; Laws, 2014, ch. 442, § 6; Laws, 2016, ch. 353, § 2, eff from and after July 1, 2016.**

**Joint Legislative Committee Note —** Section 17 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), amended this section. Section 6 of ch. 442, Laws of 2014, effective from and after passage (approved March 26, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

**Editor's Notes —** Laws of 2006, ch. 346, § 2, effective from and after July 1, 2006 (approved March 13, 2006), contained similar language to this section and also was directed to be codified as new section 37-15-38. The version contained in Laws of 2006, ch. 504, effective from and after July 1, 2006 (approved March 28, 2006), is printed here because it is the latest expression of legislative intent, as determined by the Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Laws of 2006, ch. 504 § 1(1), codified at § 37-161-1(1), provides as follows:

"SECTION 1. This act shall be known and may be referred to as the 'Mississippi

Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Cross References —** Career track programs for students not wishing to pursue baccalaureate degree, see § 37-16-17.

Mississippi Community College Board generally, see § 37-4-1 et seq.

Board of Trustees of State Institutions at Higher Learning generally, see § 37-101-1 et seq.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

Mississippi virtual public schools, see § 37-161-3.

## § 37-15-39. Legislative purpose; definitions; school districts to offer pre-advanced placement courses; funding to be provided for sophomores to take nationally recognized aptitude test for advanced placement classes; minimum number of advanced placement courses to be offered.

(1) The purpose of this section is to ensure that each student has a sufficient education for success after high school and that all students have equal access to a substantive and rigorous curriculum that is designed to challenge their minds and enhance their knowledge skill.

(2) The following words and phrases have the meanings ascribed in this section unless the context clearly requires otherwise:

(a) "Advanced placement course" means any high school level preparatory course for a college advanced placement test that incorporates all topics specified by recognized advanced placement authorities on standards for a given subject area and is approved by recognized advanced placement authorities.

(b) "Pre-advanced placement course" means a middle, junior high or high school level course that specifically prepares students to enroll and participate in an advanced placement course.

(c) "Vertical team" means a group of educators from different grade levels in a given discipline working cooperatively to develop and implement a vertically aligned program aimed at helping students from diverse backgrounds acquire the academic skills necessary for success in the advanced placement program and other challenging course work.

(d) "High concentration of low-income students" means, when used with respect to a public school or school district, a public school or school district that serves a student population with fifty percent (50%) or more being low-income individuals ages five (5) through seventeen (17) years from a low-income family on the basis of: data on children eligible for the free or reduced price lunches under the National School Lunch Act; data on children in families receiving assistance under Part A of Title IV of the Social Security Act; data on children eligible to receive medical assistance under the Medicaid program under Title XIX of the Social Security Act; or an alternate method of identifying such children which combines or extrapolates that data.

(3) The State Board of Education shall establish clear, specific and challenging training guidelines that require teachers of advanced placement courses and teachers of pre-advanced placement courses to obtain a recognized advanced placement authority endorsed training. A teacher of an advanced placement or pre-advanced placement course, or both, must obtain the appropriate training.

(4)(a) In order to ensure that each student has a sufficient education for success after high school and that all students have equal access to a substantive and rigorous curriculum that is designed to challenge their minds and enhance their knowledge skill, school districts shall offer pre-advanced placement courses to prepare students for advanced placement course work.

(b) Subject to appropriation, funding shall be made available for the 2007-2008 school year so that all sophomores in Mississippi's public schools may take an examination that measures the students' ability to succeed in an advanced placement course. The State Department of Education shall seek federal funding through the Advanced Placement Incentive Grant Program and other available funding for this purpose. Funding efforts must be focused with an intent to carry out advanced placement and pre-advanced placement activities in school districts targeted as serving a high concentration of low-income students.

(c) The State Department of Education shall develop rules necessary for the implementation of advanced placement courses.

(5) Beginning with the 2007-2008 school year, all school districts must offer at least one (1) advanced placement course in each of the four (4) core areas of math, English, science and social studies, for a total offering of no less than four (4) advanced placement courses. The use of the state's online Advanced Placement Instructional Program is an appropriate alternative for the delivery of advanced placement courses.

Any public high school offering the International Baccalaureate Diploma Program is exempt from the requirements of this subsection. However, the school may participate in teacher training and program funding on the same basis as any high school offering advanced placement courses.

**HISTORY: Laws, 2006, ch. 346, § 3; Laws, 2006, ch. 504, § 12; reenacted without change, Laws, 2009, ch. 345, § 21; Laws, 2011, ch. 516, § 2; Laws, 2012, ch. 437, § 1, eff from and after July 1, 2012.**

**Editor's Notes —** Laws of 2006, ch. 346, § 3, effective from and after July 1, 2006 (approved March 13, 2006), contained similar language to this section and also was directed to be codified as a new Section 37-15-39. The version contained in Laws of 2006, ch. 504, effective from and after July 1, 2006 (approved March 28, 2006), is printed here because it is the latest expression of legislative intent, as determined by the Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Laws of 2006, ch. 504 § 1(1), codified at § 37-161-1(1), provides as follows:

"SECTION 1. This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

**Cross References** — Dual enrollment in postsecondary state institution, see § 37-15-38.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

**Federal Aspects**— Social Security Act generally, see 42 USCS §§ 301 et seq. Medicaid generally, see 42 USCS §§ 1396 et seq.

# CHAPTER 16.

# STATEWIDE TESTING PROGRAM

Sec.

37-16-1. Purpose.
37-16-3. General powers and duties of department of education.
37-16-4. Violations of test security procedures; enforcement and penalties.
37-16-5. Assessment of student performance and achievement by district school boards.
37-16-7. Establishment of graduation standards established by district school boards; standard diploma.
37-16-9. Modification of testing instruments and procedures for students with identified handicaps or disabilities.
37-16-11. Special diploma or certificate of completion for students with disabilities; occupational diploma for students with disabilities.
37-16-13. Honorary high school diploma for World War II, Korean Conflict and Vietnam Conflict veterans.
37-16-15. High school diploma granted to persons who withdrew from school before graduation; completion of requisite graduation course work requirements and passing score on assessment reasonably comparable to assessments in existence at the time student would have graduated required.
37-16-17. Career track programs for students not pursuing baccalaureate degree; curriculum; dual-enrollment and dual-credit options.

## § 37-16-1. Purpose.

The primary purpose of the statewide testing program is to provide information needed for state-level decisions. The program shall be designed to:

(a) Assist in the identification of educational needs at the state, district and school levels.

(b) Assess how well districts and schools are meeting state goals and minimum performance standards.

(c) Provide information to aid in the development of policy issues and concerns.

(d) Provide a basis for comparisons among districts, between charter schools throughout the state and nonpublic charter schools in those school districts in which charter schools are located, and between districts, the state and the nation, where appropriate.

(e) Produce data which can be used to aid in the identification of exceptional educational programs or processes.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 30(1); Laws, 2013, ch. 497, § 65, eff from and after July 1, 2013.**

**Cross References —** Accreditation of schools, see § 37-17-1 et seq.
Superior-Performing, Exemplary and Priority Schools Programs, see § 37-18-1 et seq.
Applicability of the provisions of this section to charter schools, see § 37-28-45.

RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-16-3. General powers and duties of department of education.

(1) The State Department of Education is directed to implement a program of statewide assessment testing which shall provide for the improvement of the operation and management of the public schools. The statewide program shall be timed, as far as possible, so as not to conflict with ongoing district assessment programs. As part of the program, the department shall:

(a) Establish, with the approval of the State Board of Education, minimum performance standards related to the goals for education contained in the state's plan including, but not limited to, basic skills in reading, writing and mathematics. The minimum performance standards shall be approved by April 1 in each year they are established.

(b) Conduct a uniform statewide testing program in grades deemed appropriate in the public schools, including charter schools. The program may test skill areas, basic skills and high school course content.

(c) Monitor the results of the assessment program and, at any time the composite student performance of a school or basic program is found to be below the established minimum standards, notify the district superintendent or the governing board of the charter school, as the case may be, the school principal and the school advisory committee or other existing parent group of the situation within thirty (30) days of its determination. The department shall further provide technical assistance to a school district in the identification of the causes of this deficiency and shall recommend courses of action for its correction.

(d) Provide technical assistance to the school districts, when requested, in the development of student performance standards in addition to the established minimum statewide standards.

(e) Issue security procedure regulations providing for the security and integrity of the tests that are administered under the basic skills assessment program.

(f) In case of an allegation of a testing irregularity that prompts a need for an investigation by the Department of Education, the department may, in its discretion, take complete control of the statewide test administration in a school district or any part thereof, including, but not limited to, obtaining control of the test booklets and answer documents. In the case of any verified testing irregularity that jeopardized the security and integrity of the test(s), validity or the accuracy of the test results, the cost of the investigation and any other actual and necessary costs related to the investigation paid by the Department of Education shall be reimbursed by the local school district from funds other than federal funds, Mississippi Adequate Education

Program funds, or any other state funds within six (6) months from the date of notice by the department to the school district to make reimbursement to the department.

(2) Uniform basic skills tests shall be completed by each student in the appropriate grade. These tests shall be administered in such a manner as to preserve the integrity and validity of the assessment. In the event of excused or unexcused student absences, make-up tests shall be given. The school superintendent of every school district in the state and the principal of each charter school shall annually certify to the State Department of Education that each student enrolled in the appropriate grade has completed the required basic skills assessment test for his or her grade in a valid test administration.

(3) Within five (5) days of completing the administration of a statewide test, the principal of the school where the test was administered shall certify under oath to the State Department of Education that the statewide test was administered in strict accordance with the Requirements of the Mississippi Statewide Assessment System as adopted by the State Board of Education. The principal's sworn certification shall be set forth on a form developed and approved by the Department of Education. If, following the administration of a statewide test, the principal has reason to believe that the test was not administered in strict accordance with the Requirements of the Mississippi Statewide Assessment System as adopted by the State Board of Education, the principal shall submit a sworn certification to the Department of Education setting forth all information known or believed by the principal about all potential violations of the Requirements of the Mississippi Statewide Assessment System as adopted by the State Board of Education. The submission of false information or false certification to the Department of Education by any licensed educator may result in licensure disciplinary action pursuant to Section 37-3-2 and criminal prosecution pursuant to Section 37-16-4.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 30(2); Laws, 1987, ch. 446, § 1; Laws, 1988, ch. 372, § 1; Laws, 2010, ch. 482, § 1; Laws, 2013, ch. 497, § 66; Laws, 2015, ch. 470, § 3, eff from and after passage (approved Apr. 22, 2015).**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Violations of test security procedures, enforcement and penalties, see § 37-16-4.

Right of a district school board to substitute district assessment data for assessment data needed at the state level, see § 37-16-5.

Establishment of standards for graduation by each district school board, see § 37-16-7.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## § 37-16-4. Violations of test security procedures; enforcement and penalties.

(1) It is unlawful for anyone knowingly and willfully to do any of the following acts regarding mandatory uniform tests administered to students as required by the State Department of Education:

(a) Give examinees access to test questions prior to testing;

(b) Copy or reproduce all or any portion of any secure test booklet;

(c) Coach examinees during testing or alter or interfere with examinees' responses in any way;

(d) Make answer keys available to examinees;

(e) Fail to account for all secure test materials before, during and after testing;

(f) Participate in, direct, aid, counsel, assist in, encourage or fail to report any of the acts prohibited in this section.

(2) Any person violating any provisions of subsection (1) of this section is guilty of a misdemeanor and upon conviction shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned for not more than ninety (90) days, or both. Upon conviction, the State Board of Education may suspend or revoke the administrative or teaching credentials, or both, of the person convicted.

(3) Any person submitting a false certification to the State Department of Education that each statewide test in a school was administered in strict accordance with the Requirements of the Mississippi Statewide Assessment System as adopted by the State Board of Education, and with willful intent, is guilty of a felony and upon conviction thereof shall be fined not more than Fifteen Thousand Dollars ($15,000.00), or be imprisoned for not more than three (3) years, or both. Upon conviction, the State Board of Education may suspend or revoke the administrative or teaching credentials, or both, of the person convicted.

(4) The district attorney shall investigate allegations of violations of this section, either on its own initiative following a receipt of allegations, or at the request of a school district or the State Department of Education.

(5) The district attorney shall furnish to the State Superintendent of Education a report of the findings of any investigation conducted pursuant to this section.

(6) The State Board of Education shall establish statistical guidelines to examine the results of state mandated tests to determine where there is evidence of testing irregularities resulting in false or misleading results in the aggregate or composite test scores of the class, grade, age group or school district. When said irregularities are identified, the State Superintendent of Education may order that any group of students identified as being required to retake the test at state expense under state supervision. The school district shall be given at least thirty (30) days' notice before the next test administration and shall comply with the order of the State Superintendent of Education. The results from the second administration of the test shall be final for all uses of that data.

(7) Nothing in this section may be construed to prohibit or interfere with the responsibilities of the State Board of Education or the State Department of Education in test development or selection, test form construction, standard setting, test scoring, and reporting, or any other related activities which in the judgment of the State Superintendent of Education are necessary and appropriate.

**HISTORY: Laws, 1988, ch. 372, § 2; Laws, 1990, ch. 535, § 2; Laws, 2005, ch. 405, § 2; Laws, 2015, ch. 470, § 4, eff from and after passage (approved Apr. 22, 2015).**

**Cross References —** Revocation or suspension of teacher or administrator certificate for knowingly and willfully committing any of the acts affecting validity of mandatory uniform test results, see § 37-3-2.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

## § 37-16-5. Assessment of student performance and achievement by district school boards.

The school board of every district in this state shall periodically assess student performance and achievement in each school. Such assessment programs shall be based upon local goals and objectives which are compatible with the state's plan for education and which supplement the minimum performance standards approved by the state board of education. Data from district assessment programs shall be provided to the state department of education when such data is required in order to evaluate specific instructional programs or processes or when the data is needed for other research or evaluation projects. Each district may provide acceptable, compatible district assessment data to substitute for any assessment data needed at the state level when the state department of education certifies that such data is acceptable for the purposes of Section 37-16-3.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 30(3), eff from and after July 1, 1983.**

**Cross References —** Program of statewide assessment testing, see § 37-16-3.

## § 37-16-7. Establishment of graduation standards established by district school boards; standard diploma.

(1) Each district school board shall establish standards for graduation from its schools which shall include as a minimum:

(a) Mastery of minimum academic skills as measured by assessments developed and administered by the State Board of Education.

(b) Completion of a minimum number of academic credits, and all other applicable requirements prescribed by the district school board.

(c) By school, information on high school graduation rates. High schools with graduation rates lower than eighty percent (80%) must submit a detailed plan to the Mississippi Department of Education to restructure the high school experience to improve graduation rates.

(2) A student who meets all requirements prescribed in subsection (1) of this section shall be awarded a standard diploma in a form prescribed by the State Board of Education.

(3) The State Board of Education may establish student proficiency standards for promotion to grade levels leading to graduation.

**HISTORY: Laws, 1982, Ex Sess, Ch. 17, § 30(4, 6); Laws, 1987, ch. 446, § 2; Laws, 1999, ch. 421, § 2; Laws, 2013, ch. 494, § 2, eff from and after July 1, 2013.**

**Editor's Notes** — Laws of 1990, Chapter 589, § 26, amended this section effective July 1, 1990, provided that the Legislature, by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declare that sufficient funds were dedicated and made available for the implementation of Chapter 589. However, funds were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions were not implemented. The text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Laws of 1999, ch. 421, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Student Achievement Improvement Act of 1999.' "

On June 1, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 421, § 2.

Laws of 2013, ch. 494, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Education Works Program.' "

Chapter 494, Laws of 2013, amended Sections 37-3-53, 37-16-7, 37-18-1 and 37-19-7 and enacted Sections 37-19-9 and 37-106-37.

**Cross References** — Exception from graduation standards for handicapped students, see § 37-16-11.

## OPINIONS OF THE ATTORNEY GENERAL

There are no exemptions from the functional literacy examination (FLE) under statute or regulation for a student who is seeking to obtain a standard diploma; however, exemption is available for the student who is to receive a certificate of completion in place of a standard diploma. Kirby, Nov. 14, 1997, A.G. Op. #97-0722.

## § 37-16-9. Modification of testing instruments and procedures for students with identified handicaps or disabilities.

(1) The state board shall, after a public hearing and consideration, make provision for appropriate accommodations for testing instruments and procedures for students with identified handicaps or disabilities in order to ensure that the results of the testing represent the student's achievement, rather than reflecting the student's impaired sensory, manual, speaking or psychological process skills, except when such skills are the factors the test purports to measure.

(2) The public hearing and consideration required hereunder shall not be construed to amend or nullify the requirements of security relating to the contents of examinations or assessment instruments and related materials or data.

(3) Children with disabilities shall be included in general statewide and district-wide assessments programs, with appropriate accommodations, where necessary. As appropriate, the State Department of Education and the local educational agency shall:

(a) Develop policies and procedures for the participation of children with disabilities in alternate assessments for those children who cannot participate in statewide and district-wide assessment programs; and

(b) Develop and, beginning not later than July 1, 2000, conduct those alternate assessments.

(4) The State Department of Education shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(a) The number of children with disabilities participating in regular assessments;

(b) The number of children participating in alternate assessments;

(c) The performance of those children on regular assessments, beginning not later than July 1, 1998, and on alternate assessments, not later than July 1, 2000, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children; and

(d) Data relating to the performance of children with disabilities shall be disaggregated for assessments conducted after July 1, 1998.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 30(5, 7); Laws, 1999, ch. 582, § 11; Laws, 2010, ch. 382, § 1, eff from and after July 1, 2010.**

**Editor's Notes —** Laws of 1999, ch. 582, § 17, provides:

"SECTION 17. It is the intent of the Legislature that none of the provisions of this act shall create mandates that impose financial or legal requirements upon local school districts which are greater or more restrictive upon local school districts as required by the Individuals with Disabilities Education Act of 1997 and any subsequent amendments or regulations thereunder, or any other relevant federal legislation. Furthermore, it is not the intent of the Legislature to impose any additional state unfunded mandates for the implementation of this act. Any provisions of this act which are inconsistent, create additional unfunded state mandates, or which are more restrictive upon school districts than federal requirements shall be expressly unenforceable and have no effect."

**Cross References —** Special diploma or certificate of completion for handicapped students, see § 37-16-11.

Standards and procedures for the education of exceptional children generally, see §§ 37-23-133 et seq.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

## RESEARCH REFERENCES

**Practice References.**

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-16-11. Special diploma or certificate of completion for students with disabilities; occupational diploma for students with disabilities.

(1) A student who has been properly classified, in accordance with rules established by the State Board of Education shall, upon meeting all applicable requirements prescribed by the district school board, be awarded a special diploma in a form prescribed by the state board; however, such special

graduation requirements prescribed by the district school board shall include minimum graduation requirements as prescribed by the state board. Any such student who meets all special requirements of the district school board for his exceptionality, but is unable to meet the appropriate special state minimum requirements, shall be awarded a special certificate of completion in a form prescribed by the state board. Nothing provided in this section, however, shall be construed to limit or restrict the right of an exceptional student solely to a special diploma. Any such student shall, upon proper request, be afforded the opportunity to fully meet all requirements of Section 37-16-7 through the standard procedures established therein and thereby qualify for a standard diploma upon graduation.

(2) The State Board of Education shall develop and issue criteria for a Mississippi Occupational Diploma for students having a disability as defined by the federal Individuals with Disabilities Education Act. Beginning with the 2002-2003 school year, any such student, upon proper request, shall be afforded the opportunity to fully meet such requirements and qualify for an occupational diploma upon graduation.

(3) The special Mississippi Occupational Diploma for students with disabilities shall not be available to any student entering the Ninth Grade in the 2017-2018 school year or thereafter, pending State Board of Education approval of new graduation options.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 30(8); Laws, 2001, ch. 605, § 1; Laws, 2010, ch. 476, § 10; Laws, 2017, ch. 438, § 1, eff from and after July 1, 2017.**

**Cross References —** Modification of testing instruments and procedures for students with identified handicaps of disabilities, see § 37-16-9.

Standards and procedures for the education of exceptional children generally, see §§ 37-23-133 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

There are no exemptions from the functional literacy examination (FLE) under statute or regulation for a student who is seeking to obtain a standard diploma; however, exemption is available for the student who is to receive a certificate of completion in place of a standard diploma. Kirby, Nov. 14, 1997, A.G. Op. #97-0722.

### RESEARCH REFERENCES

**Practice References.**

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-16-13. Honorary high school diploma for World War II, Korean Conflict and Vietnam Conflict veterans.

(1) The school board of a local school district may award an honorary high school diploma in a form prescribed and supplied to school districts by the State Board of Education to veterans of World War II, the Korean Conflict and the Vietnam Conflict who were unable to complete their education due to their military service. The honorary diploma is available to any honorably dis-

charged veteran residing in Mississippi who was (a) scheduled to graduate between 1941 and 1955 but was inducted into military service before completing the necessary graduation requirements, or (b) was scheduled to graduate between 1963 and 1973 but volunteered for military service and received the Vietnam Service Ribbon. Family members of deceased eligible veterans may apply for the diploma to be awarded posthumously.

(2) The State Board of Education and State Veterans Affairs Board jointly shall develop a uniform application for persons seeking a diploma under subsection (1) of this section. The application shall request no less than the following information:

(a) The veteran's name, social security number and date of birth;

(b) The last year the veteran was in school and the veteran's grade level during that year;

(c) The year the veteran left school to enter World War II, the Korean Conflict or the Vietnam Conflict;

(d) The year the veteran would have graduated from high school;

(e) The name and location of the school attended;

(f) The date of the veteran's enlistment or draft;

(g) The veteran's service number;

(h) The veteran's date of honorable discharge;

(i) A copy of the veteran's DD-214 form, if available; and

(j) Any other information deemed relevant by the State Board of Education or State Veterans Affairs Board.

The State Board of Education shall provide local school districts, county departments of human services and local veterans services offices with copies of the uniform application.

(3) A person may request an application from any local school district, county department of human services or local veterans services office. Completed applications for a diploma may be submitted to the veteran's local school district, regardless of whether or not the veteran attended school in that district. Upon verifying the information contained in the application, including verifying the veteran's military service information with the State Veterans Affairs Board, and determining the veteran's eligibility for the honorary high school diploma, the local school board may award the diploma to the veteran. The diploma shall indicate clearly that the recipient is a veteran of World War II, the Korean Conflict or the Vietnam Conflict and that the diploma was issued at a later date due to the veteran's participation in the war. The State Department of Education and the State Veterans Affairs Board may work together to provide communities with information about hosting a diploma ceremony on or around Veteran's Day. The diploma shall be provided to the veteran or, if the veteran is deceased, to the veteran's family.

**HISTORY: Laws, 2001, ch. 565, § 1; Laws, 2004, ch. 465, § 1, eff from and after July 1, 2004.**

## § 37-16-15. High school diploma granted to persons who withdrew from school before graduation; completion of requisite graduation course work requirements and passing score on assessment reasonably comparable to assessments in existence at the time student would have graduated required.

(1) Any person who has withdrawn from high school before graduation may be granted a diploma from the Mississippi public high school that the person last attended if the person has:

(a) Completed all requisite graduation course work requirements and has achieved a passing score on an assessment reasonably comparable to the respective assessments that would qualify the person for high school graduation as such assessments existed at the time that the student would have graduated; and

(b) Made a request to the public high school district that the person last attended in Mississippi that includes relevant transcripts of course work completed.

(2) The State Department of Education is authorized to determine and/or develop any reasonably comparable assessment to be administered to persons seeking to obtain a diploma from the last Mississippi public high school of attendance under the authority granted under subsection (1) of this section.

**HISTORY: Laws, 2006, ch. 351, § 1; Laws, 2016, ch. 450, § 1, eff from and after July 1, 2016.**

**Cross References** — Adult education generally, see § 37-35-1 et seq.

## § 37-16-17. Career track programs for students not pursuing baccalaureate degree; curriculum; dual-enrollment and dual-credit options.

(1) **Purpose.** (a) The purpose of this section is to create a quality option in Mississippi's high schools for students not wishing to pursue a baccalaureate degree, which shall consist of challenging academic courses and modern career-technical studies. The goal for students pursuing the career track is to graduate from high school with a standard diploma and credit toward a community college certification in a career-technical field. These students also shall be encouraged to take the national assessment in the career-technical field in which they become certified.

(b) The State Board of Education shall develop and adopt course and curriculum requirements for career track programs offered by local public school boards in accordance with this section. The Mississippi Community College Board and the State Board of Education jointly shall determine course and curriculum requirements for the career track program.

(2) **Alternative career track; description; curriculum.** (a) A career track shall provide a student with greater technical skill and a strong academic core and shall be offered to each high school student enrolled in a public school district. The career track program shall be linked to postsecondary options and shall prepare students to pursue either a degree or certification from a postsecondary institution, an industry-based training or certification, an apprenticeship, the military, or immediate entrance into a career field. The career track shall be designed primarily for those students who are not college bound and shall provide them with alternatives to entrance into a four-year university or college after high school graduation.

(b) Students pursuing a career track shall be afforded the opportunity to dually enroll in a community or technical college or to participate in a business internship or work-study program, when such opportunities are available and appropriate.

(c) Each public school district shall offer a career track program approved by the State Board of Education.

(d) Students in a career track program shall complete an academic core of courses and a career and technical sequence of courses.

(e) The twenty-one (21) course unit requirements for the career track shall consist of the following:

(i) At least four (4) English credits, including English I and English II.

(ii) At least three (3) mathematics credits, including Algebra I.

(iii) At least three (3) science credits, including one (1) unit of biology.

(iv) At least three (3) social studies credits, including one (1) unit of U.S. History and one (1) unit of Mississippi Studies/U.S. Government.

(v) At least one-half (½) credit in health or physical education.

(vi) At least four (4) credits in career and technical education courses in the dual enrollment-dual credit programs authorized under Section 37-15-38.

(vii) At least one (1) credit in integrated technology with optional end of course testing.

(viii) At least two and one-half (2-½) credits in additional electives or career and technical education courses required by the local school board, as approved by the State Board of Education. Academic courses within the career track of the standard diploma shall provide the knowledge and skill necessary for proficiency on the state subject area tests.

(3) Nothing in this section shall disallow the development of a dual enrollment program with a technical college so long as an individual school district, with approval from the State Department of Education, agrees to implement such a program in connection with a technical college and the agreement is also approved by the proprietary school's commission.

(4) The career track program for students not pursuing a Baccalaureate Degree shall not be available to any student entering the Ninth Grade in the 2017-2018 school year or thereafter.

**HISTORY: Laws, 2010, ch. 381, § 1; Laws, 2011, ch. 517, § 1; Laws, 2014, ch. 397, § 18; Laws, 2017, ch. 438, § 2, eff from and after July 1, 2017.**

# CHAPTER 17.

# ACCREDITATION OF SCHOOLS

Sec.

37-17-1. Authority of state board of education with respect to accreditation of noncharter and charter public schools.
37-17-3. Creation of Commission on School Accreditation; composition; qualifications, appointment, terms of office and compensation of members; expenses of commission.
37-17-5. General duties of commission; appeals; executive secretary.
37-17-6. Establishment and implementation of permanent performance-based accreditation system; particular accreditation requirements; accreditation audits and reviews; development program for schools failing to meet standards; establishment of a Mississippi Recovery School District; declaration of state of emergency in school district.
37-17-7. Accreditation of nonpublic schools.
37-17-8. Comprehensive in-service staff development plans; exemption of certain school districts.
37-17-9. Accreditation of schools by other agencies.
37-17-11. Exemption of school districts from compulsory standards of accreditation.
37-17-12. Exemption of administrators at certain schools from certain statutory requirements; exemption of certain school districts from certain statutory requirements and process standards; State Department of Education to provide report of exempted and nonexempted process standards.
37-17-13. Abolition of school districts declared to be in state of emergency; powers of board of education with regard to such school districts; reconstitution, etc., of districts; alternative procedures for appointment of new local school board for district [Subsection 4 repealed effective July 1, 2020].
37-17-15. Withdrawal of accreditation of certain school districts for reasons other than failure to meet student academic standards or comply with financial accountability requirements does not limit district schools' participation in extracurricular or athletic activities.
37-17-17. Statewide Mississippi Achievement School District created; criteria for transferring schools to district; administration of transferred schools; return to local school district governance under certain circumstances; funding.

## § 37-17-1. Authority of state board of education with respect to accreditation of noncharter and charter public schools.

(1) The power and authority to prescribe standards for the accreditation of noncharter public schools, to insure compliance with such standards and to establish procedures for the accreditation of noncharter public schools is hereby vested in the State Board of Education. The board shall, by orders placed upon its minutes, adopt all necessary rules and regulations to effectuate the purposes of this chapter and shall provide, through the State Department of Education, for the necessary personnel for the enforcement of standards so established.

(2) A charter school authorized by the Mississippi Charter School Authorizer Board must be granted accreditation by the State Board of Education

based solely on the approval of the school by the authorizer. If the authorizer, at any time, revokes a school's charter, the State Board of Education shall withdraw the accreditation of the charter school immediately.

**HISTORY: Codes, 1942, § 6244-21; Laws, 1970, ch. 366, § 1; Laws, 2013, ch. 497, § 67, eff from and after July 1, 2013.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.
Statewide testing program, see § 37-16-1 et seq.
Superior-Performing, Exemplary and Priority Schools Programs, see § 37-18-1 et seq.

## RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).

## § 37-17-3. Creation of Commission on School Accreditation; composition; qualifications, appointment, terms of office and compensation of members; expenses of commission.

The Commission on School Accreditation created under this section is hereby continued and reconstituted as follows:

The State Board of Education shall appoint a "Commission on School Accreditation" to be composed of fifteen (15) qualified members. The membership of said commission shall be composed of the following: two (2) classroom teachers, two (2) principals of schools, one (1) superintendent of a separate school district, one (1) superintendent of a county or other school district, one (1) local school board member from a separate school district; one (1) local school board member from a county or other school district; and seven (7) members who are not actively engaged in the education profession. Members of the commission serving on July 1, 1994, shall continue to serve until their term of office expires. No new appointments shall be made until such time as the expiration of a member's term has reduced the commission to less than fifteen (15) members, at which time new appointments shall be made from the categories specified hereinabove. The membership of said commission shall be appointed by the board upon recommendation of the State Superintendent of Public Education. In making the first appointments, five (5) members shall be appointed for a term of one (1) year, five (5) members shall be appointed for a term of two (2) years, five (5) members shall be appointed for a term of three (3) years, and five (5) members shall be appointed for a term of four (4) years. Thereafter, all members shall be appointed for a term of four (4) years. Said commission shall meet upon call of the State Superintendent of Public Education. There shall be three (3) members of said commission from each congressional district. Each member of said commission shall receive the per diem authorized by Section 25-3-69, Mississippi Code of 1972, plus actual and necessary expenses and mileage as authorized by Section 25-3-41, Mississippi Code of 1972, for each day actually spent in attending the meetings of the commission. The expenses of said commission shall be paid out of any funds available for the operation of the State Department of Education.

**HISTORY: Codes, 1942, § 6244-22; Laws, 1970, ch. 366, § 2; Laws, 1986, ch. 432, § 3; Laws, 1989, ch. 418, § 1; Laws, 1992, ch. 524, § 10; Laws, 1994, ch. 376, § 1; Laws, 1994, ch. 581, § 6, eff from and after July 1, 1994.**

**Cross References** — State superintendent of public education generally, see §§ 37-3-9, 37-3-11.

Implementation and development of plans for comprehensive school health education program, see § 37-13-135.

General duties of commission, see § 37-17-5.

Requirement that State Board of Education furnish textbooks only for courses within curriculum recommended by State Accreditation Commission, see § 37-43-31.

### OPINIONS OF THE ATTORNEY GENERAL

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

## § 37-17-5. General duties of commission; appeals; executive secretary.

It shall be the purpose of the Commission on School Accreditation to continually review the standards on accreditation and the enforcement thereof and to make recommendations thereon to the State Board of Education. All controversies involving the accreditation of schools shall be initially heard by a duly authorized representative of the commission before whom a complete record shall be made. After the conclusion of the hearing, the duly authorized representative of the commission shall make a recommendation to the commission as to the resolution of the controversies, and the commission, after considering the transcribed record and the recommendation of its representative, shall make its decision which becomes final unless the local school board of the school district involved shall appeal to the State Board of Education, which appeal shall be on the record previously made before the commission's representative except as may be provided by rules and regulations adopted by the State Board of Education. Such rules and regulations may provide for the submission of new factual evidence. All appeals from the State Board of Education shall be on the record and shall be filed in the Circuit Court of the First Judicial District of Hinds County, Mississippi. The commission shall select a competent and qualified court reporter to record and transcribe all hearings held before its duly authorized representative whose fees and costs of transcription shall be paid by the school district involved within forty-five (45) days after having been notified of such costs and fees by the commission. An appropriate member of the staff of the State Department of Education shall be designated by the State Superintendent of Public Education to serve as executive secretary of the commission.

**HISTORY: Codes, 1942, § 6244-22; Laws, 1970, ch. 366, § 2; Laws, 1986, ch. 432, § 4, eff from and after July 1, 1986.**

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

State superintendent of public education, see § 37-3-9, 37-3-11.

Commission on school accreditiation to encourage development and implementation of plans comprehensive school health education, see § 37-13-135.

Requirement that early childhood programs comply with minimum performance standards established by the commission on school accreditation, see § 37-21-7.

## § 37-17-6. Establishment and implementation of permanent performance-based accreditation system; particular accreditation requirements; accreditation audits and reviews; development program for schools failing to meet standards; establishment of a Mississippi Recovery School District; declaration of state of emergency in school district.

(1) The State Board of Education, acting through the Commission on School Accreditation, shall establish and implement a permanent performance-based accreditation system, and all noncharter public elementary and secondary schools shall be accredited under this system.

(2) No later than June 30, 1995, the State Board of Education, acting through the Commission on School Accreditation, shall require school districts to provide school classroom space that is air-conditioned as a minimum requirement for accreditation.

(3)(a) Beginning with the 1994-1995 school year, the State Board of Education, acting through the Commission on School Accreditation, shall require that school districts employ certified school librarians according to the following formula:

| Number of Students Per School Library | Number of Certified School Librarians |
|---|---|
| 0 — 499 Students | ½ Full-time Equivalent Certified Librarian |
| 500 or More Students | 1 Full-time Certified Librarian |

(b) The State Board of Education, however, may increase the number of positions beyond the above requirements.

(c) The assignment of certified school librarians to the particular schools shall be at the discretion of the local school district. No individual shall be employed as a certified school librarian without appropriate training and certification as a school librarian by the State Department of Education.

(d) School librarians in the district shall spend at least fifty percent (50%) of direct work time in a school library and shall devote no more than one-fourth (¼) of the workday to administrative activities that are library related.

(e) Nothing in this subsection shall prohibit any school district from employing more certified school librarians than are provided for in this section.

(f) Any additional millage levied to fund school librarians required for accreditation under this subsection shall be included in the tax increase limitation set forth in Sections 37-57-105 and 37-57-107 and shall not be deemed a new program for purposes of the limitation.

(4) On or before December 31, 2002, the State Board of Education shall implement the performance-based accreditation system for school districts and for individual noncharter public schools which shall include the following:

(a) High expectations for students and high standards for all schools, with a focus on the basic curriculum;

(b) Strong accountability for results with appropriate local flexibility for local implementation;

(c) A process to implement accountability at both the school district level and the school level;

(d) Individual schools shall be held accountable for student growth and performance;

(e) Set annual performance standards for each of the schools of the state and measure the performance of each school against itself through the standard that has been set for it;

(f) A determination of which schools exceed their standards and a plan for providing recognition and rewards to those schools;

(g) A determination of which schools are failing to meet their standards and a determination of the appropriate role of the State Board of Education and the State Department of Education in providing assistance and initiating possible intervention. A failing district is a district that fails to meet both the absolute student achievement standards and the rate of annual growth expectation standards as set by the State Board of Education for two (2) consecutive years. The State Board of Education shall establish the level of benchmarks by which absolute student achievement and growth expectations shall be assessed. In setting the benchmarks for school districts, the State Board of Education may also take into account such factors as graduation rates, dropout rates, completion rates, the extent to which the school or district employs qualified teachers in every classroom, and any other factors deemed appropriate by the State Board of Education. The State Board of Education, acting through the State Department of Education, shall apply a simple "A," "B," "C," "D" and "F" designation to the current school and school district statewide accountability performance classification labels beginning with the State Accountability Results for the 2011-2012 school year and following, and in the school, district and state report cards required under state and federal law. Under the new designations, a school or school district that has earned a "Star" rating shall be designated an "A" school or school district; a school or school district that has earned a "High-Performing" rating shall be designated a "B" school or school district; a school or school district that has earned a "Successful" rating shall be designated a "C" school or school district; a school or school district that has earned an "Academic Watch" rating shall be designated a "D" school or school district; a school or school district that has earned a "Low-Performing," "At-Risk of Failing" or "Failing" rating shall be designated an "F" school or school district. Effective with the implementation of any new curriculum and assessment standards, the State Board of Education, acting through the State Department of Education, is further authorized and directed to change the school and school district accreditation rating system to a simple "A," "B," "C," "D," and "F" designation based on a combination of student achievement scores and student growth as measured by the statewide testing programs developed by the State Board of Education pursuant to Chapter 16, Title 37, Mississippi Code of 1972. In any statute or regulation containing the former accreditation designations, the new designations shall be applicable;

(h) Development of a comprehensive student assessment system to implement these requirements; and

(i) The State Board of Education may, based on a written request that contains specific reasons for requesting a waiver from the school districts affected by Hurricane Katrina of 2005, hold harmless school districts from assignment of district and school level accountability ratings for the 2005-2006 school year. The State Board of Education upon finding an extreme hardship in the school district may grant the request. It is the intent of the Legislature that all school districts maintain the highest possible academic standards and instructional programs in all schools as required by law and the State Board of Education.

(5)(a) Effective with the 2013-2014 school year, the State Department of Education, acting through the Mississippi Commission on School Accreditation, shall revise and implement a single "A" through "F" school and school district accountability system complying with applicable federal and state requirements in order to reach the following educational goals:

(i) To mobilize resources and supplies to ensure that all students exit third grade reading on grade level by 2015;

(ii) To reduce the student dropout rate to thirteen percent (13%) by 2015; and

(iii) To have sixty percent (60%) of students scoring proficient and advanced on the assessments of the Common Core State Standards by 2016 with incremental increases of three percent (3%) each year thereafter.

(b) The State Department of Education shall combine the state school and school district accountability system with the federal system in order to have a single system.

(c) The State Department of Education shall establish five (5) performance categories ("A," "B," "C," "D" and "F") for the accountability system based on the following criteria:

(i) Student Achievement: the percent of students proficient and advanced on the current state assessments;

(ii) Individual student growth: the percent of students making one (1) year's progress in one (1) year's time on the state assessment, with an emphasis on the progress of the lowest twenty-five percent (25%) of students in the school or district;

(iii) Four-year graduation rate: the percent of students graduating with a standard high school diploma in four (4) years, as defined by federal regulations;

(iv) Categories shall identify schools as Reward ("A" schools), Focus ("D" schools) and Priority ("F" schools). If at least five percent (5%) of schools in the state are not graded as "F" schools, the lowest five percent (5%) of school grade point designees will be identified as Priority schools. If at least ten percent (10%) of schools in the state are not graded as "D" schools, the lowest ten percent (10%) of school grade point designees will be identified as Focus schools;

(v) The State Department of Education shall discontinue the use of Star School, High-Performing, Successful, Academic Watch, Low-Performing, At-Risk of Failing and Failing school accountability designations;

(vi) The system shall include the federally compliant four-year graduation rate in school and school district accountability system calculations. Graduation rate will apply to high school and school district accountability ratings as a compensatory component. The system shall discontinue the use of the High School Completer Index (HSCI);

(vii) The school and school district accountability system shall incorporate a standards-based growth model, in order to support improvement of individual student learning;

(viii) The State Department of Education shall discontinue the use of the Quality Distribution Index (QDI);

(ix) The State Department of Education shall determine feeder patterns of schools that do not earn a school grade because the grades and subjects taught at the school do not have statewide standardized assessments needed to calculate a school grade. Upon determination of the feeder pattern, the department shall notify schools and school districts prior to the release of the school grades beginning in 2013. Feeder schools will be assigned the accountability designation of the school to which they provide students;

(x) Standards for student, school and school district performance will be increased when student proficiency is at a seventy-five percent (75%) and/or when sixty-five percent (65%) of the schools and/or school districts are earning a grade of "B" or higher, in order to raise the standard on performance after targets are met.

(6) Nothing in this section shall be deemed to require a nonpublic school that receives no local, state or federal funds for support to become accredited by the State Board of Education.

(7) The State Board of Education shall create an accreditation audit unit under the Commission on School Accreditation to determine whether schools are complying with accreditation standards.

(8) The State Board of Education shall be specifically authorized and empowered to withhold adequate education program fund allocations, whichever is applicable, to any public school district for failure to timely report student, school personnel and fiscal data necessary to meet state and/or federal requirements.

(9) [Deleted]

(10) The State Board of Education shall establish, for those school districts failing to meet accreditation standards, a program of development to be complied with in order to receive state funds, except as otherwise provided in subsection (15) of this section when the Governor has declared a state of emergency in a school district or as otherwise provided in Section 206, Mississippi Constitution of 1890. The state board, in establishing these standards, shall provide for notice to schools and sufficient time and aid to enable schools to attempt to meet these standards, unless procedures under subsection (15) of this section have been invoked.

(11) Beginning July 1, 1998, the State Board of Education shall be charged with the implementation of the program of development in each applicable school district as follows:

(a) Develop an impairment report for each district failing to meet accreditation standards in conjunction with school district officials;

(b) Notify any applicable school district failing to meet accreditation standards that it is on probation until corrective actions are taken or until the deficiencies have been removed. The local school district shall develop a corrective action plan to improve its deficiencies. For district academic deficiencies, the corrective action plan for each such school district shall be based upon a complete analysis of the following: student test data, student grades, student attendance reports, student dropout data, existence and other relevant data. The corrective action plan shall describe the specific measures to be taken by the particular school district and school to improve: (i) instruction; (ii) curriculum; (iii) professional development; (iv) personnel and classroom organization; (v) student incentives for performance; (vi) process deficiencies; and (vii) reporting to the local school board, parents and the community. The corrective action plan shall describe the specific individuals responsible for implementing each component of the recommendation and how each will be evaluated. All corrective action plans shall be provided to the State Board of Education as may be required. The decision of the State Board of Education establishing the probationary period of time shall be final;

(c) Offer, during the probationary period, technical assistance to the school district in making corrective actions. Beginning July 1, 1998, subject to the availability of funds, the State Department of Education shall provide technical and/or financial assistance to all such school districts in order to implement each measure identified in that district's corrective action plan through professional development and on-site assistance. Each such school district shall apply for and utilize all available federal funding in order to support its corrective action plan in addition to state funds made available under this paragraph;

(d) Assign department personnel or contract, in its discretion, with the institutions of higher learning or other appropriate private entities with experience in the academic, finance and other operational functions of schools to assist school districts;

(e) Provide for publication of public notice at least one time during the probationary period, in a newspaper published within the jurisdiction of the school district failing to meet accreditation standards, or if no newspaper is published therein, then in a newspaper having a general circulation therein. The publication shall include the following: declaration of school system's status as being on probation; all details relating to the impairment report; and other information as the State Board of Education deems appropriate. Public notices issued under this section shall be subject to Section 13-3-31 and not contrary to other laws regarding newspaper publication.

(12)(a) If the recommendations for corrective action are not taken by the local school district or if the deficiencies are not removed by the end of the probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. Additionally, if the local school district violates accreditation standards that have been determined by the policies and procedures of the State Board of Education to be a basis for withdrawal of school district's accreditation without a probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. After its consideration of the results of the hearing, the Commission on School Accreditation shall be authorized, with the approval of the State Board of Education, to withdraw the accreditation of a public school district, and issue a request to the Governor that a state of emergency be declared in that district.

(b) If the State Board of Education and the Commission on School Accreditation determine that an extreme emergency situation exists in a school district that jeopardizes the safety, security or educational interests of the children enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law, or when a school district meets the State Board of Education's definition of a failing school district for two (2) consecutive full school years, or if more than fifty percent (50%) of the schools within the school district are designated as Schools At-Risk in any one (1) year, the State Board of Education may request the Governor to declare a state of emergency in that school district. For purposes of this paragraph, the declarations of a state of emergency shall not be limited to those instances when a school district's impairments are related to a lack of financial resources, but also shall include serious failure to meet minimum academic standards, as evidenced by a continued pattern of poor student performance.

(c) Whenever the Governor declares a state of emergency in a school district in response to a request made under paragraph (a) or (b) of this subsection, the State Board of Education may take one or more of the following actions:

(i) Declare a state of emergency, under which some or all of state funds can be escrowed except as otherwise provided in Section 206, Constitution of 1890, until the board determines corrective actions are being taken or the deficiencies have been removed, or that the needs of students warrant the release of funds. The funds may be released from escrow for any program which the board determines to have been restored to standard even though the state of emergency may not as yet be terminated for the district as a whole;

(ii) Override any decision of the local school board or superintendent of education, or both, concerning the management and operation of the school district, or initiate and make decisions concerning the management and operation of the school district;

(iii) Assign an interim superintendent, or in its discretion, contract with a private entity with experience in the academic, finance and other operational functions of schools and school districts, who will have those powers and duties prescribed in subsection (15) of this section;

(iv) Grant transfers to students who attend this school district so that they may attend other accredited schools or districts in a manner that is not in violation of state or federal law;

(v) For states of emergency declared under paragraph (a) only, if the accreditation deficiencies are related to the fact that the school district is too small, with too few resources, to meet the required standards and if another school district is willing to accept those students, abolish that district and assign that territory to another school district or districts. If the school district has proposed a voluntary consolidation with another school district or districts, then if the State Board of Education finds that it is in the best interest of the pupils of the district for the consolidation to proceed, the voluntary consolidation shall have priority over any such assignment of territory by the State Board of Education;

(vi) For states of emergency declared under paragraph (b) only, reduce local supplements paid to school district employees, including, but not limited to, instructional personnel, assistant teachers and extracurricular activities personnel, if the district's impairment is related to a lack of financial resources, but only to an extent that will result in the salaries being comparable to districts similarly situated, as determined by the State Board of Education;

(vii) For states of emergency declared under paragraph (b) only, the State Board of Education may take any action as prescribed in Section 37-17-13.

(d) At the time that satisfactory corrective action has been taken in a school district in which a state of emergency has been declared, the State Board of Education may request the Governor to declare that the state of emergency no longer exists in the district.

(e) The parent or legal guardian of a school-age child who is enrolled in a school district whose accreditation has been withdrawn by the Commission on School Accreditation and without approval of that school district may file a petition in writing to a school district accredited by the Commission on School Accreditation for a legal transfer. The school district accredited by the

Commission on School Accreditation may grant the transfer according to the procedures of Section 37-15-31(1)(b). In the event the accreditation of the student's home district is restored after a transfer has been approved, the student may continue to attend the transferee school district. The per-pupil amount of the adequate education program allotment, including the collective "add-on program" costs for the student's home school district shall be transferred monthly to the school district accredited by the Commission on School Accreditation that has granted the transfer of the school-age child.

(f) Upon the declaration of a state of emergency for any school district in which the Governor has previously declared a state of emergency, the State Board of Education may either:

(i) Place the school district into district transformation, in which the school district shall remain until it has fulfilled all conditions related to district transformation. If the district was assigned an accreditation rating of "D" or "F" when placed into district transformation, the district shall be eligible to return to local control when the school district has attained a "C" rating or higher for five (5) consecutive years, unless the State Board of Education determines that the district is eligible to return to local control in less than the five-year period;

(ii) Abolish the school district and administratively consolidate the school district with one or more existing school districts;

(iii) Reduce the size of the district and administratively consolidate parts of the district, as determined by the State Board of Education. However, no school district which is not in district transformation shall be required to accept additional territory over the objection of the district; or

(iv) Require the school district to develop and implement a district improvement plan with prescriptive guidance and support from the State Department of Education, with the goal of helping the district improve student achievement. Failure of the school board, superintendent and school district staff to implement the plan with fidelity and participate in the activities provided as support by the department shall result in the school district retaining its eligibility for district transformation.

(g) There is established a Mississippi Recovery School District within the State Department of Education under the supervision of a deputy superintendent appointed by the State Superintendent of Public Education, who is subject to the approval by the State Board of Education. The Mississippi Recovery School District shall provide leadership and oversight of all school districts that are subject to district transformation status, as defined in Chapters 17 and 18, Title 37, Mississippi Code of 1972, and shall have all the authority granted under these two (2) chapters. The Mississippi Department of Education, with the approval of the State Board of Education, shall develop policies for the operation and management of the Mississippi Recovery School District. The deputy state superintendent is responsible for the Mississippi Recovery School District and shall be authorized to oversee the administration of the Mississippi Recovery School District, oversee the interim superintendent assigned by the State Board of Education to a local school district, hear appeals that would normally be filed by students, parents or employees and heard by a local school board, which hearings on appeal shall be conducted in a prompt and timely manner in the school district from which the appeal originated in order to ensure the ability of appellants, other parties and witnesses to appeal without undue burden of travel costs or loss of time from work, and perform other related duties as assigned by the State Superintendent of Public Education. The deputy state superintendent is responsible for the Mississippi Recovery School District and shall determine, based on rigorous professional qualifications set by the State Board of Education, the appropriate individuals to be engaged to be interim superintendents and financial advisors, if applicable, of all school districts subject to district transformation status. After State Board of Education approval, these individuals shall be deemed independent contractors.

(13) Upon the declaration of a state of emergency in a school district under subsection (12) of this section, the Commission on School Accreditation shall be responsible for public notice at least once a week for at least three (3) consecutive weeks in a newspaper published within the jurisdiction of the school district failing to meet accreditation standards, or if no newspaper is published therein, then in a newspaper having a general circulation therein. The size of the notice shall be no smaller than one-fourth (¼) of a standard newspaper page and shall be printed in bold print. If an interim superintendent has been appointed for the school district, the notice shall begin as follows: "By authority of Section 37-17-6, Mississippi Code of 1972, as amended, adopted by the Mississippi Legislature during the 1991 Regular Session, this school district (name of school district) is hereby placed under the jurisdiction of the State Department of Education acting through its appointed interim superintendent (name of interim superintendent)."

The notice also shall include, in the discretion of the State Board of Education, any or all details relating to the school district's emergency status, including the declaration of a state of emergency in the school district and a description of the district's impairment deficiencies, conditions of any district transformation status and corrective actions recommended and being taken. Public notices issued under this section shall be subject to Section 13-3-31 and not contrary to other laws regarding newspaper publication.

Upon termination of the state of emergency in a school district, the Commission on School Accreditation shall cause notice to be published in the school district in the same manner provided in this section, to include any or all details relating to the corrective action taken in the school district that resulted in the termination of the state of emergency.

(14) The State Board of Education or the Commission on School Accreditation shall have the authority to require school districts to produce the necessary reports, correspondence, financial statements, and any other documents and information necessary to fulfill the requirements of this section.

Nothing in this section shall be construed to grant any individual, corporation, board or interim superintendent the authority to levy taxes except in accordance with presently existing statutory provisions.

(15)(a) Whenever the Governor declares a state of emergency in a school district in response to a request made under subsection (12) of this section, the State Board of Education, in its discretion, may assign an interim superintendent to the school district, or in its discretion, may contract with an appropriate private entity with experience in the academic, finance and other operational functions of schools and school districts, who will be responsible for the administration, management and operation of the school district, including, but not limited to, the following activities:

(i) Approving or disapproving all financial obligations of the district, including, but not limited to, the employment, termination, nonrenewal and reassignment of all licensed and nonlicensed personnel, contractual agreements and purchase orders, and approving or disapproving all claim dockets and the issuance of checks; in approving or disapproving employment contracts of superintendents, assistant superintendents or principals, the interim superintendent shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105;

(ii) Supervising the day-to-day activities of the district's staff, including reassigning the duties and responsibilities of personnel in a manner which, in the determination of the interim superintendent, will best suit the needs of the district;

(iii) Reviewing the district's total financial obligations and operations and making recommendations to the district for cost savings, including, but not limited to, reassigning the duties and responsibilities of staff;

(iv) Attending all meetings of the district's school board and administrative staff;

(v) Approving or disapproving all athletic, band and other extracurricular activities and any matters related to those activities;

(vi) Maintaining a detailed account of recommendations made to the district and actions taken in response to those recommendations;

(vii) Reporting periodically to the State Board of Education on the progress or lack of progress being made in the district to improve the district's impairments during the state of emergency; and

(viii) Appointing a parent advisory committee, comprised of parents of students in the school district that may make recommendations to the interim superintendent concerning the administration, management and operation of the school district.

The cost of the salary of the interim superintendent and any other actual and necessary costs related to district transformation status paid by the State Department of Education shall be reimbursed by the local school district from funds other than adequate education program funds. The department shall submit an itemized statement to the superintendent of the local school district for reimbursement purposes, and any unpaid balance may be withheld from the district's adequate education program funds.

At the time that the Governor, in accordance with the request of the State Board of Education, declares that the state of emergency no longer exists in a school district, the powers and responsibilities of the interim superintendent assigned to the district shall cease.

(b) In order to provide loans to school districts under a state of emergency or in district transformation status that have impairments related to a lack of financial resources, the School District Emergency Assistance Fund is created as a special fund in the State Treasury into which monies may be transferred or appropriated by the Legislature from any available public education funds. Funds in the School District Emergency Assistance Fund up to a maximum balance of Three Million Dollars ($3,000,000.00) annually shall not lapse but shall be available for expenditure in subsequent years subject to approval of the State Board of Education. Any amount in the fund in excess of Three Million Dollars ($3,000,000.00) at the end of the fiscal year shall lapse into the State General Fund or the Education Enhancement Fund, depending on the source of the fund.

The State Board of Education may loan monies from the School District Emergency Assistance Fund to a school district that is under a state of emergency or in district transformation status, in those amounts, as determined by the board, that are necessary to correct the district's impairments related to a lack of financial resources. The loans shall be evidenced by an agreement between the school district and the State Board of Education and shall be repayable in principal, without necessity of interest, to the School District Emergency Assistance Fund by the school district from any allowable funds that are available. The total amount loaned to the district shall be due and payable within five (5) years after the impairments related to a lack of financial resources are corrected. If a school district fails to make payments on the loan in accordance with the terms of the agreement between the district and the State Board of Education, the State Department of Education, in accordance with rules and regulations established by the State Board of Education, may withhold that district's adequate education program funds in an amount and manner that will effectuate repayment consistent with the terms of the agreement; the funds withheld by the department shall be deposited into the School District Emergency Assistance Fund.

The State Board of Education shall develop a protocol that will outline the performance standards and requisite timeline deemed necessary for extreme emergency measures. If the State Board of Education determines that an extreme emergency exists, simultaneous with the powers exercised in this subsection, it shall take immediate action against all parties responsible for the affected school districts having been determined to be in an extreme emergency. The action shall include, but not be limited to, initiating civil actions to recover funds and criminal actions to account for criminal activity. Any funds recovered by the State Auditor or the State Board of Education from the surety bonds of school officials or from any civil action brought under this subsection shall be applied toward the repayment of any loan made to a school district hereunder.

(16) If a majority of the membership of the school board of any school district resigns from office, the State Board of Education shall be authorized to assign an interim superintendent, who shall be responsible for the adminis-

tration, management and operation of the school district until the time as new board members are selected or the Governor declares a state of emergency in that school district under subsection (12), whichever occurs first. In that case, the State Board of Education, acting through the interim superintendent, shall have all powers which were held by the previously existing school board, and may take any action as prescribed in Section 37-17-13 and/or one or more of the actions authorized in this section.

(17)(a) If the Governor declares a state of emergency in a school district, the State Board of Education may take all such action pertaining to that school district as is authorized under subsection (12) or (15) of this section, including the appointment of an interim superintendent. The State Board of Education shall also have the authority to issue a written request with documentation to the Governor asking that the office of the superintendent of the school district be subject to recall. If the Governor declares that the office of the superintendent of the school district is subject to recall, the local school board or the county election commission, as the case may be, shall take the following action:

(i) If the office of superintendent is an elected office, in those years in which there is no general election, the name shall be submitted by the State Board of Education to the county election commission, and the county election commission shall submit the question at a special election to the voters eligible to vote for the office of superintendent within the county, and the special election shall be held within sixty (60) days from notification by the State Board of Education. The ballot shall read substantially as follows:

"Shall County Superintendent of Education ____________ (here the name of the superintendent shall be inserted) of the ____________ (here the title of the school district shall be inserted) be retained in office? Yes ________ No ________"

If a majority of those voting on the question votes against retaining the superintendent in office, a vacancy shall exist which shall be filled in the manner provided by law; otherwise, the superintendent shall remain in office for the term of that office, and at the expiration of the term shall be eligible for qualification and election to another term or terms.

(ii) If the office of superintendent is an appointive office, the name of the superintendent shall be submitted by the president of the local school board at the next regular meeting of the school board for retention in office or dismissal from office. If a majority of the school board voting on the question vote against retaining the superintendent in office, a vacancy shall exist which shall be filled as provided by law, otherwise the superintendent shall remain in office for the duration of his employment contract.

(b) The State Board of Education may issue a written request with documentation to the Governor asking that the membership of the school board of the school district shall be subject to recall. Whenever the Governor declares that the membership of the school board is subject to recall, the county election commission or the local governing authorities, as the case may be, shall take the following action:

(i) If the members of the local school board are elected to office, in those years in which the specific member's office is not up for election, the name of the school board member shall be submitted by the State Board of Education to the county election commission, and the county election commission at a special election shall submit the question to the voters eligible to vote for the particular member's office within the county or school district, as the case may be, and the special election shall be held within sixty (60) days from notification by the State Board of Education. The ballot shall read substantially as follows:

"Members of the ____________ (here the title of the school district shall be inserted) School Board who are not up for election this year are subject to recall because of the school district's failure to meet critical accountability standards as defined in the letter of notification to the Governor from the State Board of Education. Shall the member of the school board representing this area, ________ (here the name of the school board member holding the office shall be inserted), be retained in office? Yes ________ No ________"

If a majority of those voting on the question vote against retaining the member of the school board in office, a vacancy in that board member's office shall exist, which shall be filled in the manner provided by law; otherwise, the school board member shall remain in office for the term of that office, and at the expiration of the term of office, the member shall be eligible for qualification and election to another term or terms of office. However, if a majority of the school board members are recalled in the special election, the Governor shall authorize the board of supervisors of the county in which the school district is situated to appoint members to fill the offices of the members recalled. The board of supervisors shall make those appointments in the manner provided by law for filling vacancies on the school board, and the appointed members shall serve until the office is filled at the next regular special election or general election.

(ii) If the local school board is an appointed school board, the name of all school board members shall be submitted as a collective board by the president of the municipal or county governing authority, as the case may be, at the next regular meeting of the governing authority for retention in office or dismissal from office. If a majority of the governing authority voting on the question vote against retaining the board in office, a vacancy shall exist in each school board member's office, which shall be filled as provided by law; otherwise, the members of the appointed school board shall remain in office for the duration of their term of appointment, and those members may be reappointed.

(iii) If the local school board is comprised of both elected and appointed members, the elected members shall be subject to recall in the manner provided in subparagraph (i) of this paragraph (b), and the appointed members shall be subject to recall in the manner provided in subparagraph (ii).

(18) Beginning with the school district audits conducted for the 1997-1998 fiscal year, the State Board of Education, acting through the Commission on School Accreditation, shall require each school district to comply with standards established by the State Department of Audit for the verification of fixed assets and the auditing of fixed assets records as a minimum requirement for accreditation.

(19) Before December 1, 1999, the State Board of Education shall recommend a program to the Education Committees of the House of Representatives and the Senate for identifying and rewarding public schools that improve or are high performing. The program shall be described by the board in a written report, which shall include criteria and a process through which improving schools and high-performing schools will be identified and rewarded.

The State Superintendent of Public Education and the State Board of Education also shall develop a comprehensive accountability plan to ensure that local school boards, superintendents, principals and teachers are held accountable for student achievement. A written report on the accountability plan shall be submitted to the Education Committees of both houses of the Legislature before December 1, 1999, with any necessary legislative recommendations.

(20) Before January 1, 2008, the State Board of Education shall evaluate and submit a recommendation to the Education Committees of the House of Representatives and the Senate on inclusion of graduation rate and dropout rate in the school level accountability system.

(21) If a local school district is determined as failing and placed into district transformation status for reasons authorized by the provisions of this section, the interim superintendent appointed to the district shall, within forty-five (45) days after being appointed, present a detailed and structured corrective action plan to move the local school district out of district transformation status to the deputy superintendent. A copy of the interim superintendent's corrective action plan shall also be filed with the State Board of Education.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 12; Laws, 1985, ch. 398; Laws, 1991, ch. 471, § 1; Laws, 1994, ch. 581, § 7; Laws, 1996, ch. 302, § 1; Laws, 1997, ch. 386, § 3; Laws, 1997, ch. 336, § 1; Laws, 1998, ch. 497, § 3; Laws, 1999, ch. 421, § 3; Laws, 2000, ch. 533, § 6; Laws, 2000, ch. 610, §§ 6, 7; Laws, 2005, 5th Ex Sess, ch. 2, § 1; Laws, 2007, ch. 518, § 1; Laws, 2009, ch. 516, § 3; Laws, 2010, ch. 420, § 1; Laws, 2011, ch. 442, § 5; Laws, 2011, ch. 515, § 1; Laws, 2012, ch. 525, § 1; Laws, 2012, ch. 563, § 1; Laws, 2013, ch. 497, § 68; Laws, 2013, ch. 563, § 1; Laws, 2016, ch. 424, § 2; Laws, 2017, ch. 439, § 1, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** Section 3 of ch. 386, Laws of 1997, effective from and after passage (approved March 18, 1997), amended this section. Section 1 of ch. 336, Laws of 1997, effective July 1, 1997, also amended this section. As amended in 1997, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and

Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the May 8, 1997, meeting of the Committee.

Section 5 of ch. 442, Laws of 2011, effective from and after July 1, 2011 (approved March 23, 2011), amended this section. Section 1 of ch. 515, Laws of 2011, effective July 2, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 515, Laws of 2011, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Section 1 of ch. 525, Laws of 2012, effective from and after September 24, 2012, amended this section. Section 1 of ch. 563, Laws of 2012, effective July 1, 2012, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 563, Laws of 2012.

Section 68 of ch. 497, Laws of 2013, effective July 1, 2013 (approved April 17, 2013), amended this section. Section 1 of ch. 563, Laws of 2013, effective July 1, 2013 (approved April 25, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subdivision (17)(a). The reference to “Section 37-17-6” was changed to “this section.” The Joint Committee ratified the correction at its August 1, 2013, meeting.

Pursuant to Section 1-1-109, the Joint Committee Compilation, Revision and Publication of Legislation corrected two typographical errors in this section, as amended by Laws of 2017, Chapter 439. The phrase “district of transformation” was change to “district transformation” twice in (12)(g). The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

**Editor's Notes —** Laws of 1999, ch. 421, § 1, provides:

“SECTION 1. This act shall be known and may be cited as the ‘Mississippi Student Achievement Improvement Act of 1999.’ ”

On June 1, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 421, § 3.

Laws of 2000, ch. 610, § 7, provides:

“SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed.”

The repeal had the effect of repealing the amendments made to this section by Laws of 2000, ch. 533, § 6.

Laws of 2009, ch. 516 § 1 provides:

“SECTION 1. This act shall be entitled and may be cited as the “Children First Act of 2009.”

On July 23, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 518, § 1.

Laws of 2010, ch. 321, § 3 provides:

"During fiscal year 2010, the State Fiscal Officer shall transfer to the School District Emergency Assistance Fund created in Section 37-17-6(14)(b) [now 37-1-6(15)(b)] the sum of One Million Dollars ($1,000,000.00) from the Mississippi Adequate Education Program budget of the State Department of Education (Fund No. 2230). The department is authorized to escalate the appropriate budget by the amount specified in this section and expend that sum for the purposes authorized by law, subject to the following provision:

"No funds provided in this section shall be expended by the State Department of Education for the support of a school district in which the Governor has declared a state of emergency until the State Board of Education has appointed and assigned an interim conservator to the school district. The department shall provide to the House and Senate Education Committees and the House and Senate Appropriations Committees a monthly report of all expenditures that it makes for the support of a school district from the funds provided in this section during the period that the school district is administered, managed and operated by an interim conservator."

By letter dated September 24, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Chapter 525, Laws of 2012.

**Cross References —** State common-school funds, see Miss. Const. Art. 8, § 206.

State Board of Education generally, see § 37-1-1 et seq.

Written notice of determination not to offer employee renewal contract, see § 37-9-105.

Statewide assessment testing program, see § 37-16-1 et seq.

General duties of the commission on school accreditation, see § 37-17-5.

Accreditation of nonpublic schools, see § 37-17-7.

Accreditation of schools by other agencies, see § 37-17-9.

Authority of State Board of Eduction as to school districts declared to be in a state of emergency, see § 37-17-13.

Superior-Performing, Exemplary and Priority Schools Programs, see § 37-18-1 et seq.

Education Enhancement Fund, see § 37-61-33.

## JUDICIAL DECISIONS

**1. Conservator's authority.**

Interim school district conservator was acting within the scope of the conservator's authority under Miss. Code Ann. § 37-17-6(14)(a) when the conservator declared the school board's new transfer policy revoked existing transfers, thereby revoking a student's inter-district transfer; the board could withdraw its consent to the transfer at any time. Fails v. Jefferson Davis County Pub. Sch. Bd., 96 So. 3d 1, 2011 Miss. App. LEXIS 287 (Miss. Ct. App. 2011), vacated, 95 So. 3d 1223, 2012 Miss. LEXIS 260 (Miss. 2012).

## OPINIONS OF THE ATTORNEY GENERAL

In a school district under conservatorship, the conservator has the ultimate duty and responsibility for both notice of personnel actions and the final personnel decision. Thompson, April 12, 2000, A.G. Op. #2000-0209.

In a school district under conservatorship, it is within the discretion of the conservator to employ legal counsel and have the fees paid by the local school district. Thompson, April 12, 2000, A.G. Op. #2000-0209.

RESEARCH REFERENCES

**ALR.**

Liability of private school or educational institution for breach of contract arising from provision or deficient educational instruction. 46 A.L.R.5th 581.

## § 37-17-7. Accreditation of nonpublic schools.

Any nonpublic school may, through its governing body, request that the State Board of Education approve such institution. Approval shall be based upon a process promulgated by the State Board of Education; provided, however, that in no event shall the State Board of Education adopt more stringent standards for approval of nonpublic schools than the accreditation standards applied to public schools.

**HISTORY: Codes, 1942, § 6244-23; Laws, 1970, ch. 366, § 3; Laws, 1992, ch. 524, § 11, eff from and after July 1, 1992.**

**Cross References —** Powers and duties of the commission on teacher and administrator education, certification and development, see § 37-3-2.

Accreditation of schools by other agencies, see § 37-17-9.

RESEARCH REFERENCES

**ALR.**

Validity of state regulation of curriculum and instruction in private and parochial schools. 18 A.L.R.4th 649.

## § 37-17-8. Comprehensive in-service staff development plans; exemption of certain school districts.

(1) The State Board of Education, through the Commission on School Accreditation, shall establish criteria for comprehensive in-service staff development plans. These criteria shall: (a) include, but not be limited to, formula and guidelines for allocating available state funds for in-service training to local school districts; (b) require that a portion of the plans be devoted exclusively for the purpose of providing staff development training for beginning teachers within that local school district and for no other purpose; and (c) require that a portion of the school district's in-service training for administrators and teachers be dedicated to the application and utilization of various disciplinary techniques. The board shall each year make recommendations to the Legislature concerning the amount of funds which shall be appropriated for this purpose.

(2) School districts shall not be required to submit staff development plans to the Commission on School Accreditation for approval. However, any school district accredited at the lowest performance levels, as defined by the State Board of Education, shall include, as a part of any required corrective action plan, provisions to address staff development in accordance with State Board of Education requirements. All school districts, unless specifically exempt from this section, must maintain on file staff development plans as required under this section. The plan shall have been prepared by a district

committee appointed by the district superintendent and consisting of teachers, administrators, school board members, and lay people, and it shall have been approved by the district superintendent.

(3) In order to insure that teachers are not overburdened with paperwork and written reports, local school districts and the State Board of Education shall take such steps as may be necessary to further the reduction of paperwork requirements on teachers.

(4) Districts meeting the highest levels of accreditation standards, as defined by the State Board of Education, shall be exempted from the mandatory provisions of this section relating to staff development plans.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 13; Laws, 1992, ch. 519, § 6; Laws, 1998, ch. 544, § 9; Laws, 2006, ch. 417, § 8; reenacted without change, Laws, 2009, ch. 345, § 22; reenacted and amended, Laws, 2009, ch. 445, § 6, eff from and after July 1, 2009.**

**Joint Legislative Committee Note —** Section 6 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), reenacted and amended this section. Section 22 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 6 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes —** Laws of 1998, ch. 544, which enacted the provisions of Sections 37-3-89, 37-3-91, 37-101-29, 37-149-7, 37-151-10 and 37-159-1 through 37-159-17, and amended the provisions of Sections 37-9-77, 37-17-8, 37-143-11 [repealed] and 37-149-1, may be cited as the "Mississippi Critical Teacher Shortage Act of 1998" pursuant to Section 37-159-1.

The preamble to Laws of 1998, ch. 544, provides in pertinent part:

"WHEREAS, in many rural areas and communities in the State of Mississippi, particularly in the Mississippi Delta, there exists a critical shortage of qualified teachers that continues to grow at an increasing rate as the number of teachers in those areas who are eligible for retirement escalates while fewer college students aspire to a career in teaching; and

"WHEREAS, the absence of a qualified teacher in every classroom in the state contributes to overall lower test scores for the State of Mississippi and will negatively impact the state's work force of tomorrow, made of our children of today; and

"WHEREAS, it is the intent of the Legislature, in passing this act, to immediately reverse this teacher shortage trend by offering attractive incentives to qualified persons who pursue a profession in teaching and agree to serve in those communities wherein the greatest need for teachers exists, thereby enabling every child in the State of Mississippi to receive a quality education: NOW, THEREFORE,"

**Cross References —** Powers and duties of the commission on teacher and administrator education, certification and development, see § 37-3-2.

Exemption from the provisions of this section for school districts meeting Level 4 or 5 accreditation standards, see § 37-17-12.

## § 37-17-9. Accreditation of schools by other agencies.

This chapter shall not be construed to establish the only accrediting agency in the State of Mississippi, and nothing contained herein shall be construed to prevent any nonpublic school association or associations or group or groups from establishing its or their accrediting agency, unrelated to any such accrediting agency for public schools as established by this chapter. Nothing in this chapter shall prevent such nonpublic school accrediting agency or agencies from functioning in such capacity.

**HISTORY: Codes, 1942, § 6244-24; Laws, 1970, ch. 366, § 4, eff from and after passage (approved April 3, 1970).**

**Cross References** — Establishment and implementation of permanent performance-based accreditation system, see § 37-17-6.

Accreditation of nonpublic schools, see § 37-17-7.

## § 37-17-11. Exemption of school districts from compulsory standards of accreditation.

The State Board of Education, in its discretion, may exempt any school district meeting the highest levels of state accreditation standards, as defined by the State Board of Education, from any compulsory standard of accreditation. However, if the standard of accreditation is an educational policy required by statute, any such exemption shall only be made if specifically authorized by law.

**HISTORY: Laws, 1992, ch. 419, § 13; Laws, 1992, ch. 519, § 1; Laws, 2006, ch. 417, § 2; reenacted without change, Laws, 2009, ch. 345, § 23; reenacted and amended, Laws, 2009, ch. 445, § 7, eff from and after July 1, 2009.**

**Joint Legislative Committee Note** — Section 7 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), reenacted and amended this section. Section 23 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 7 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes** — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

## § 37-17-12. Exemption of administrators at certain schools from certain statutory requirements; exemption of certain school districts from certain statutory requirements and process standards; State Department of Education to provide report of exempted and nonexempted process standards.

(1)(a) Effective July 1, 2006, principals and administrators with career level certifications at schools with the highest levels of accreditation standards, as defined by the State Board of Education, shall be exempted from the provisions pursuant to Section 37-3-4, subject to approval of the local superintendent.

(b) Effective July 1, 2006, school districts meeting the highest levels of accreditation standards, as defined by the State Board of Education, shall be exempted from the provisions pursuant to Sections 37-3-46, 37-3-49(2), 37-7-337, 37-17-8 and 37-21-7(4).

(c) The State Department of Education shall develop a policy to determine reevaluation of exemption status.

(2) The State Department of Education is directed to provide a report of all exempted process standards and nonexempted process standards to the Office of the Governor, the Chairs of the House and Senate Education Committees, and the Mississippi Association of School Superintendents by December 1, 2007.

**HISTORY: Laws, 2006, ch. 417, § 3; reenacted without change, Laws, 2009, ch. 345, § 24; reenacted and amended, Laws, 2009, ch. 445, § 8, eff from and after July 1, 2009.**

**Joint Legislative Committee Note —** Section 8 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), reenacted and amended this section. Section 24 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 8 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

## § 37-17-13. Abolition of school districts declared to be in state of emergency; powers of board of education with regard to such school districts; reconstitution, etc., of districts; alternative procedures for appointment of new local school board for district [Subsection 4 repealed effective July 1, 2020].

(1) Whenever the Governor declares a state of emergency in a school district in response to a certification by the State Board of Education and the Commission on School Accreditation made under Section 37-17-6(12)(b), the State Board of Education, in addition to any actions taken under Section

37-17-6, may abolish the school district and assume control and administration of the schools formerly constituting the district, and appoint an interim superintendent to carry out this purpose under the direction of the State Board of Education. In such case, the State Board of Education shall have all powers which were held by the previously existing school board, and the previously existing superintendent of schools or county superintendent of education, including, but not limited to, those enumerated in Section 37-7-301, and the authority to request tax levies from the appropriate governing authorities for the support of the schools and to receive and expend the tax funds as provided by Section 37-57-1 et seq. and Section 37-57-105 et seq.

(2) When a school district is abolished under this section, loans from the School District Emergency Assistance Fund may be made by the State Board of Education for the use and benefit of the schools formerly constituting the district in accordance with the procedures set forth in Section 37-17-6(15) for such loans to the district. The abolition of a school district under this section shall not impair or release the property of that school district from liability for the payment of the loan indebtedness, and it shall be the duty of the appropriate governing authorities to levy taxes on the property of the district so abolished from year to year according to the terms of the indebtedness until same shall be fully paid.

(3) After a school district is abolished under this section, at such time as the State Board of Education determines that the impairments have been substantially corrected after a period of maintaining a “C” accountability rating for five (5) consecutive years, unless the State Board of Education determines that the district is eligible to return to local control in less than the five-year period, the State Board of Education shall reconstitute, reorganize or change or alter the boundaries of the previously existing district; however, no partition or assignment of territory formerly included in the abolished district to one or more other school districts may be made by the State Board of Education without the consent of the school board of the school district to which such territory is to be transferred, such consent to be spread upon its minutes. At that time, the State Board of Education, in appropriate cases, shall notify the appropriate governing authority or authorities of its action and request them to provide for the election or appointment of school board members in the manner provided by law. In the event the applicable statute provides that vacancies in an all-elected membership of the school board will be filled by appointment by the remaining members of the school board and no members of the school board remain in office, the Governor shall call a special election to fill the vacancies. In such situations, the Governor will set the date of the special election and the election will be conducted by the county election commission. The State Board of Education shall also request the governing authority or authorities to provide for the appointment of a superintendent or superintendents to govern the reconstituted, reorganized or changed district or districts, which such appointed position shall apply in all school districts including those school districts in which the position of superintendent was previously an elected office. A board member or superintendent in office at the

time the Governor declares a state of emergency in a school district to be abolished shall not be eligible to serve in that office for the school district reconstituted, reorganized or changed after the Governor declares that an emergency no longer exists.

(4) As an alternative to the procedure set forth in subsection (3), in the event a local school board is abolished by the State Board of Education pursuant to this section, after the State Board of Education determines that the impairments are being substantially corrected and the responsibility of the district transformation in such district upon the conclusion of the final scholastic year in which a district has maintained a "C" accountability rating for five (5) consecutive years, unless the State Board of Education determines that the district is eligible to return to local control in less than the five-year period, the State Board of Education may appoint a new five-member board for the administration of the school district and shall notify the local county board of supervisors and/or municipal governing authority of such appointment, spreading the names of the new school board members on its minutes. The new local school board members shall be residents of the school district. The new local school board members appointed by the State Board of Education may serve in an advisory capacity to the interim superintendent for its first year of service and thereafter shall have full responsibility to administer the school district. Thirty (30) days prior to the end of the first year of office as an advisory board, each member shall draw lots to determine when the members shall rotate off the board as follows: one (1) member shall serve a one-year term of office; one (1) member shall serve a two-year term of office; one (1) member shall serve a three-year term of office; one (1) member shall serve a four-year term of office; and one (1) member shall serve a five-year term of office. At that time, the State Board of Education shall notify the appropriate board of supervisors or municipal governing authority of this action and request them to provide for the election or appointment of school board members at the end of the terms of office in the manner provided by law, in order for the local residents of the school district to select a new school board on a phased-in basis. In such situations, the Governor will set the date of any necessary special election which shall be conducted by the county election commission. The State Board of Education shall also request the new school board to provide for the appointment of a superintendent to govern the reconstituted or reorganized school district, including those school districts in which the position of superintendent was previously an elected office. A board member or superintendent in office at the time the Governor declares a state of emergency in a school district shall not be eligible to serve in the office of school board member or superintendent for the school district reconstituted or reorganized following the district transformation period.

This subsection (4) shall stand repealed from and after July 1, 2020.

**HISTORY: Laws, 1996, ch. 302, § 2; Laws, 1999, ch. 421, § 4; Laws, 2007, ch. 518, § 2; Laws, 2012, ch. 525, § 2; Laws, 2013, ch. 331, § 1; Laws, 2013, ch. 363, § 1; Laws, 2015, ch. 485, § 1; Laws, 2017, ch. 439, § 2, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Committee Compilation, Revision and Publication of Legislation corrected two typographical errors in this section, as amended by Laws of 2017, Chapter 439. The phrase "district of transformation" was change to "district transformation" twice in (4). The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in statutory references in this section by substituting "Section 37-17-6(12)(b)" for "Section 37-17-6(11)(b)" in subsection (1) and "Section 37-17-6(15)" for "Section 37-17-6(14)" in subsection 2. The Joint Committee ratified the corrections at its August 12, 2019, meeting.

**Editor's Notes —** This section was amended by two bills in 2013. The effective date of each of the two bills that amended this section, Chapter 331 (House Bill No. 975) and Chapter 363 (Senate Bill No. 2779), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bills were approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 331 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated July 9, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 331 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 331, so Chapter 331 became effective on the date of the response letter from the United States Attorney General, July 9, 2013.

Chapter 363 was not submitted before the *Shelby County* decision, but the Mississippi Attorney General's Office submitted Chapter 363 to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 16, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 363 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 363, so Chapter 363 became effective from and after July 16, 2013, the date of the United States Attorney General's response letter. Because that date is later than the date of the response letter for Chapter 331, the version of this section in Chapter 363 is the controlling version of this section.

As set out above, this section reflects the amendments to the section by Chapter 363.

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Laws of 1996, ch. 302, § 2, on May 14, 1996.

Laws of 1999, ch. 421, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Student Achievement Improvement Act of 1999.'"

On June 1, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 421, § 4.

By letter dated July 23, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 518.

By letter dated September 24, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 525, Laws of 2012.

**Cross References —** Abolition, reorganization or alteration of district generally, see § 37-7-103 et seq.

Authority of State Board of Education as to school districts declared to be in a state of emergency generally, see § 37-17-6.

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 38, 47 et seq.

**CJS.**

78 C.J.S., Schools and School Districts §§ 109, 110.

## § 37-17-15. Withdrawal of accreditation of certain school districts for reasons other than failure to meet student academic standards or comply with financial accountability requirements does not limit district schools' participation in extracurricular or athletic activities.

Effective March 26, 2014, the withdrawal of a school district's accreditation by the Commission on School Accreditation in a school district with an "A" or "B" accountability rating, for any reason other than failure to meet student academic standards or for failure to comply with financial accountability requirements, shall not result in any limitation of the schools in the district to participate in any extracurricular or athletic activity in the regular or postseason. The Commission on School Accreditation shall amend its rules and regulations to conform to the provisions of this section.

**HISTORY: Laws, 2014, ch. 442, § 8, eff from and after passage (approved Mar. 26, 2014).**

## § 37-17-17. Statewide Mississippi Achievement School District created; criteria for transferring schools to district; administration of transferred schools; return to local school district governance under certain circumstances; funding.

(1) There is created the Mississippi Achievement School District for the purpose of transforming persistently failing public schools and districts throughout the state into quality educational institutions. The Mississippi Achievement School District shall be a statewide school district, separate and distinct from all other school districts but not confined to any specified geographic boundaries, and may be comprised of any public schools or school districts in the state which, during two (2) consecutive school years, are designated an "F" school or district by the State Board of Education under the

accountability rating system or which have been persistently failing and chronically underperforming.

(2) The Mississippi Achievement School District shall be governed by the State Board of Education.

(3) The State Board of Education shall obtain suitable office space to serve as the administrative office of the school district.

(4) The State Board of Education shall select an individual to serve as superintendent of the Mississippi Achievement School District. The superintendent must be deemed by the board to be highly qualified with a demonstrable track record for producing results in a context relevant to that of Mississippi Achievement School District schools. The superintendent of the Mississippi Achievement School District shall exercise powers and duties that would afford significant autonomy but are bound by the governance of the State Board of Education.

(5)(a) Each public school or district in the state which, during each of two (2) consecutive school years or during two (2) of three (3) consecutive school years, receives an "F" designation by the State Board of Education under the accountability rating system or has been persistently failing as defined by the State Board of Education may be absorbed into and become a part of the Mississippi Achievement School District. All eligible public schools and districts shall be prioritized by the Mississippi Achievement School District according to criteria set by the Mississippi Achievement School District and publicized prior to the annual release of accountability rating data. The Mississippi Achievement School District shall takeover only the number of schools and districts for which it has the capacity to serve. The transfer of the school's/district's governance from the local school district to the Mississippi Achievement School District shall take effect upon the approval of the State Board of Education unless, in the sole determination of the Mississippi Achievement School District, the transition may be more smoothly accomplished through a gradual transfer of control. If the Mississippi Achievement School District elects not to assume complete control of a school or district immediately after that school receives an "F" designation during each of two (2) consecutive school years or during two (2) of the three (3) consecutive school years, the State Board of Education shall prescribe the process and timetable by which the school or district shall be absorbed; however, in no event may the transfer of the school or district to the Mississippi Achievement School District be completed later than the beginning of the school year next succeeding the year during which the school or district receives the "F" designation. School districts that are eligible to be absorbed by the Achievement School District, but are not absorbed due to the capacity of the Achievement School District, shall develop and implement a district improvement plan with prescriptive guidance and support from the Mississippi Department of Education, with the goal of helping the district improve student achievement. Failure of the school board, superintendent and school district staff to implement the plan with fidelity and participate in the activities provided as support by the department shall result in the school district retaining its eligibility for the Mississippi Achievement School District.

(b) The State Board of Education shall adopt rules and regulations governing the operation of the Mississippi Achievement School District.

(c) Designations assigned to schools or districts under the accountability rating system by the State Board of Education before the 2015-2016 school year may not be considered in determining whether a particular school or district is subject to being absorbed by the Mississippi Achievement School District. During the 2017-2018 school year, any school or district receiving an "F" designation after also being designated an "F" school or district in the 2015-2016 and 2016-2017 school years may be absorbed immediately by the Mississippi Achievement School District, upon approval of the State Board of Education.

(d) The school district from which an "F" school or district is being absorbed must cooperate fully with the Mississippi Achievement School District and the State Board of Education in order to provide as smooth a transition as possible in the school's/district's governance and operations for the students enrolled in the school or district. Upon completion of the transfer of a school or district to the Mississippi Achievement School District, the school or district shall be governed by the rules, regulations, policies and procedures established by the State Board of Education specifically for the Mississippi Achievement School District, and the school or district shall no longer be under the purview of the school board of the local school district. In the event of the transfer of governance and operations of a school district, the State Board of Education shall abolish the district as prescribed in Section 37-17-13.

(e) Upon the transfer of the school or school district to the Mississippi Achievement School District, the individual appointed by the State Board of Education to serve as superintendent for the Mississippi Achievement School District shall be responsible for the administration, management and operation of the school or school district, including the following activities: (i) approving or denying all financial obligations of the school or school district; (ii) approving or denying the employment, termination, nonrenewal and reassignment of all licensed and nonlicensed personnel; (iii) approving or denying contractual agreements and purchase orders; (iv) approving or denying all claim dockets and the issuance of checks; (v) supervising the day-to-day activities of the school or school district's staff in a manner which in the determination of the Mississippi Achievement School District will best suit the needs of the school or school district; (vi) approving or denying all athletic, band and other extracurricular activities and any matters related to those activities; (vii) honoring any reasonable financial commitment of the district being absorbed; and (viii) reporting periodically to the State Board of Education on the progress or lack of progress being made in the school or school district to improve the school or school district's impairments.

(f) Upon attaining and maintaining a school or district accountability rating of "C" or better under the State Department of Education's accountability rating system for five (5) consecutive years, the State Board of Education may decide to revert the absorbed school or district back to local governance, provided the school or school(s) in question are not conversion charter schools. "Local governance" may include a traditional school board model of governance or other new form of governance such as mayoral control, or other type of governance. The State Board of Education shall determine the best form of local governance and school board composition after soliciting the input of local citizens and shall outline a process for establishing the type of governance selected. The manner and timeline for reverting a school or district back to local control shall be at the discretion of the State School Board, but in no case shall it exceed five (5) years.

(6) The Superintendent of the Mississippi Achievement School District shall hire those persons to be employed as principals, teachers and noninstructional personnel in schools or districts absorbed into the Mississippi Achievement School District. Only highly qualified individuals having a demonstrable record of success may be selected by the superintendent for such positions in the Mississippi Achievement School District. The superintendent may choose to continue the employment of any person employed in an "F" rated school when the school or district is absorbed into the Mississippi Achievement School District; alternatively, the superintendent may elect not to offer continued employment to a person formerly employed at a school or district that is absorbed into the Mississippi Achievement School District. Any persons employed by the Mississippi Achievement School District shall not be subject to Sections 37-9-101 through 37-9-113.

(7)(a) The Mississippi Achievement School District may use a school building and all facilities and property that is a part of a school and recognized as part of the facilities or assets of the school before it is absorbed into the Mississippi Achievement School District. In addition, the Mississippi Achievement School District shall have access to those additional facilities that typically were available to that school or district, its students, faculty and staff before its absorption by the Mississippi Achievement School District. Use of facilities by a school or district in the Mississippi Achievement School District must be unrestricted and free of charge. However, the Mississippi Achievement School District shall be responsible for providing routine maintenance and repairs necessary to maintain the facilities in as good a condition as when the right of use was acquired by the Mississippi Achievement School District. The Mississippi Achievement School District shall be responsible for paying all utilities at the facilities used for the absorbed school. Any fixtures, improvements and tangible assets added to a school building or facility by the Mississippi Achievement School District must remain at the school or district building or facility if the school or district is returned to local governance.

(b) The State Board of Education shall include in the rules and regulations adopted pursuant to subsection (5) of this section specific provisions addressing the rights and responsibilities of the Mississippi Achievement School District relating to the real and personal property of a school or district that is absorbed into the Mississippi Achievement School District.

(8)(a) The Mississippi Achievement School District shall certify annually to the State Board of Education in which a Mississippi Achievement School District school or district is located the number of students residing in the school district which are enrolled in that school or district.

(b) Whenever an increase in funding is requested by the school board for the support of schools within a particular school district absorbed into the Mississippi Achievement School District, the State Board of Education and the superintendent for the Mississippi Achievement School District shall hold a public meeting in the local municipality having jurisdiction of the absorbed school district to allow input of local residents on the matter, and subsequent to the conclusion of such meeting, the board of the Mississippi Achievement School District shall submit its request for ad valorem increase in dollars to the local governing authority having jurisdiction over the absorbed school district for approval of the request for increase in ad valorem tax effort. In a district in which a school or schools but not the entire district is absorbed into the Mississippi Achievement School District, the local school district shall pay directly to the Mississippi Achievement School District an amount for each student enrolled in that school equal to the ad valorem tax receipts and in-lieu payments received per pupil for the support of the local school district in which the student resides. The pro rata ad valorem receipts and in-lieu receipts to be transferred to the Mississippi Achievement School District shall include all levies for the support of the local school district under Sections 37-57-1 (local contribution to the education funding program) and 37-57-105 (school district operational levy) and may not include any taxes levied for the retirement of the local school district's bonded indebtedness or short-term notes or any taxes levied for the support of vocational-technical education programs, unless the school or schools absorbed include a high school at which vocational-technical education programs are offered. In no event may the payment exceed the pro rata amount of the local ad valorem payment to the education funding program under Section 37-57-1 for the school district in which the student resides. Payments made under this section by a school district to the Mississippi Achievement School District must be made before the expiration of three (3) business days after the funds are distributed to the local school district by the tax collector.

(c) If an entire school district is absorbed into the Mississippi Achievement School District, the tax collector shall pay the amounts as described in paragraph (b) of this subsection, with the exception that all funds should transfer, including taxes levied for the retirement of the local school district's bonded indebtedness or short-term notes and any taxes levied for the support of vocational-technical education programs. The Mississippi Achievement School District shall pay funds raised to retire the district's debts to the appropriate creditors on behalf of the former district.

(9)(a) The State Department of Education shall make payments to the Mississippi Achievement School District for each student in average daily membership at a Mississippi Achievement School District school equal to the state share of the education funding program payments for each student in average daily attendance at the local school district or former local school district in which that school is located. In calculating the local contribution for purposes of determining the state share of the education funding program payments, the department shall deduct the pro rata local contribution of the school district or former school district in which the student resides, to be determined as provided in Section 37-151-7(2)(a).

(b) Payments made pursuant to this subsection by the State Department of Education must be made at the same time and in the same manner as education funding program payments are made to all other school districts under Sections 37-151-101 and 37-151-103. Amounts payable to the Mississippi Achievement School District must be determined by the State Department of Education in the same manner that such amounts are calculated for all other school districts under the education funding program.

(10) The Mississippi Achievement School District shall be considered a local educational agency for the same purposes and to the same extent that all other school districts in the state are deemed local educational agencies under applicable federal laws.

(11) The Mississippi Achievement School District may receive donations or grants from any public or private source, including any federal funding that may be available to the school district or individual schools within the Mississippi Achievement School District.

(12) The Legislature may appropriate sufficient funding to the State Department of Education for the 2017 fiscal year for the specific purpose of funding the start-up, operational and any other required costs of the Mississippi Achievement School District during the 2017-2018 school year.

**HISTORY: Laws, 2016, ch. 486, § 1; Laws, 2017, ch. 439, § 3, eff from and after July 1, 2017.**

# CHAPTER 18.

# SUPERIOR-PERFORMING, EXEMPLARY AND SCHOOL AT-RISK SCHOOLS PROGRAMS

Sec.
37-18-1. Superior-Performing and Exemplary Schools Programs; designation as Superior-Performing, Exemplary, or School At-Risk School; growth expectations and proficiency measurements; monetary incentives; special recognition for schools receiving Superior-Performing or Exemplary School designation.
37-18-3. School At-Risk designation for schools deficient in educating students; appropriation of adequate funds to provide assistance; evaluation team and report.
37-18-5. School improvement plan; assistance team; community-based prekindergarten through higher education council.
37-18-7. Professional development plan for educators identified as needing improvement; declaration of state of emergency in school district under certain circumstances.

## § 37-18-1. Superior-Performing and Exemplary Schools Programs; designation as Superior-Performing, Exemplary, or School At-Risk School; growth expectations and proficiency measurements; monetary incentives; special recognition for schools receiving Superior-Performing or Exemplary School designation.

(1) The State Board of Education shall establish, design and implement a Superior-Performing Schools Program and an Exemplary Schools Program for identifying and rewarding public schools, including charter schools, that improve. The State Board of Education shall develop rules and regulations for the program, establish criteria and establish a process through which Superior-Performing and Exemplary Schools will be identified and rewarded. Upon full implementation of the statewide testing program, Superior-Performing, Exemplary or School At-Risk designation shall be made by the State Board of Education in accordance with the following:

(a) A growth expectation will be established by testing students annually and, using a psychometrically approved formula, by tracking their progress. This growth expectation will result in a composite score each year for each school.

(b) A determination will be made as to the percentage of students proficient in each school. This measurement will define what a student must know in order to be deemed proficient at each grade level and will clearly show how well a student is performing. The definition of proficiency shall be developed for each grade, based on a demonstrated range of performance in relation to content as reflected in the Mississippi Curriculum Frameworks. This range of performance must be established through a formal procedure including educators, parents, community leaders and other stakeholders.

(c) A school has the following two (2) methods for designation as either a Superior-Performing or an Exemplary School, to be determined on an annual basis:

(i) A school exceeds its growth expectation by a percentage established by the State Board of Education; or

(ii) A school achieves the grade level proficiency standard established by the State Board of Education.

Any school designated as a School At-Risk which exceeds its growth expectation by a percentage established by the State Board of Education shall no longer be considered a School At-Risk and shall be eligible for monetary awards under this section.

(2) Superior-Performing and Exemplary Schools may apply to the State Board of Education for monetary incentives to be used for selected school needs, as identified by a vote of all licensed and instructional personnel employed at the school. These incentive funds may be used for specific school needs, including, but not limited to:

(a) Funding for professional development activities. Staff participating in such activities will report to the school and school district or, in the case of a charter school, the governing board of the school about the benefits and lessons learned from such training;

(b) Technology needs;

(c) Sabbaticals for teachers or administrators, or both, to pursue additional professional development or educational enrichment;

(d) Paid professional leave;

(e) Training for parents, including, but not limited to, the following:

(i) Curriculum;

(ii) Chapter 1;

(iii) Special need students;

(iv) Student rights and responsibility;

(v) School and community relations;

(vi) Effective parenting.

All funds awarded under this subsection shall be subject to specific appropriation therefor by the Legislature.

(3) The State Board of Education shall provide special recognition to all schools receiving Superior-Performing or Exemplary designation and, in the case of noncharter public schools, their school districts. Examples of such recognition include, but are not limited to: public announcements and events; special recognition of student progress and effort; certificates of recognition and plaques for teachers, principals, superintendents, support and classified personnel and parents; and media announcements utilizing the services of Mississippi Educational Television.

(4) The State Department of Education may benefit from the use of growth expectation measurements under this section in making evaluations under Section 37-19-9.

**HISTORY: Laws, 2000, ch. 533, § 1; Laws, 2000, ch. 610, §§ 1, 7; Laws, 2008, ch.**

**462, § 1; Laws, 2013, ch. 494, § 6; Laws, 2013, ch. 497, § 69, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Section 6 of ch. 494, Laws of 2013, effective July 1, 2013 (approved April 17, 2013), amended this section. Section 69 of ch. 497, Laws of 2013, effective July 1, 2013 (approved April 17, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

**Editor's Notes —** Laws of 2000, ch. 610, § 7, provides:

"SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed."

The repeal had the effect of repealing the version of this section enacted by Laws of 2000, ch. 533, § 1.

Laws of 2013, ch. 494, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Education Works Program.' "

Chapter 494, Laws of 2013, amended Sections 37-3-53, 37-16-7, 37-18-1 and 37-19-7 and enacted Sections 37-19-9 and 37-106-37.

**Cross References —** Statewide testing program, see § 37-16-1 et seq.

Accreditation of schools, see § 37-17-1 et seq.

Teacher Opportunity Program, see § 37-19-7.

Applicability of the provisions of this section to charter schools, see § 37-28-45.

### RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-18-3. School At-Risk designation for schools deficient in educating students; appropriation of adequate funds to provide assistance; evaluation team and report.

(1) Upon full implementation of the statewide testing programs developed by the State Board of Education pursuant to Chapter 16, Title 37, Mississippi Code of 1972, not later than December 31, 2002, the board shall establish for those individual schools failing to meet accreditation standards established under this chapter for Schools At-Risk, a program of development to be complied with in order to receive state funds. The Legislature shall, subject to the availability of funds, annually appropriate adequate funds to implement the provisions of this chapter. The State Board of Education may, in its discretion, assess local school districts for the costs of implementing the provisions of this chapter.

(2) Following a thorough analysis of school data each year, the State Department of Education shall identify those schools that are deficient in

educating students and are in need of improvement. This analysis shall measure the individual school performance by determining if a school met its assigned yearly growth expectation and by determining what percentage of the students in the school are proficient. A school shall be identified as a School At-Risk and in need of assistance if the school: (a) does not meet its growth expectation and has a percentage of students functioning below grade level, as designated by the State Board of Education; (b) is designated as a Level 1 school, or other future comparable performance designation by the State Board of Education; or (c) is designated as a Level 2 school, or other future comparable performance designation by the State Board of Education, for two (2) consecutive years.

(3) Within fifteen (15) days after a School At-Risk has been identified, written notice shall be sent by the State Board of Education by certified mail to both the school principal and the local board of education. Within fifteen (15) days after notification the State Board of Education shall assign an evaluation team to the school, subject to the availability of funding. The evaluation team shall be independent of the school being evaluated and may include employees of the State Department of Education. The team may include retired educators who have met certain standards and have completed all necessary training.

(4) An approved evaluation team shall have the following powers and duties:

(a) The evaluation team may request any financial documentation that it deems necessary, and the School At-Risk, with the assistance and cooperation of the school district central office, shall submit such requested financial information to the evaluation team.

(b) The evaluation team shall analyze the School At-Risk data to determine probable areas of weakness before conducting an on-site audit. The evaluation team shall proceed to conduct an on-site audit and shall prepare an evaluation report. If necessary, the evaluation team may request additional individuals in specialty areas to participate as team members in preparing the evaluation. After completing the evaluation of the School At-Risk, the team shall prepare and adopt its school evaluation report, which shall be submitted to the State Superintendent of Public Education for approval within ninety (90) calendar days. The school evaluation report shall identify any personnel who were found by the evaluation team to be in need of improvement and need to participate in a professional development plan. Evaluation instruments used to evaluate teachers, principals, superintendents or any other certified or classified personnel will be instruments which have been validated for such purposes.

(5) Following the approval of the evaluation report by the State Superintendent of Public Education, a representative of the State Superintendent of Public Education and the evaluation team leader shall present the evaluation report to the principal of the School At-Risk and to the superintendent and school board members of the local school district. Following this presentation, the evaluation report shall be presented to the community served by the School At-Risk at an advertised public meeting.

**HISTORY: Laws, 2000, ch. 533, § 2; Laws, 2000, ch. 610, §§ 2, 7; Laws, 2008, ch. 462, § 2; Laws, 2010, ch. 488, § 2; Laws, 2011, ch. 515, § 2, eff from and after July 2, 2011.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error near the beginning of (4)(b). The word "School's" was changed to "School" so that "shall analyze the School's At-Risk data" reads "shall analyze the School At-Risk data." The Joint Committee ratified the correction at its August 5, 2008, meeting.

**Editor's Notes —** Laws of 2000, ch. 610, § 7, provides:

"SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed."

The repeal had the effect of repealing the version of this section enacted by Laws of 2000, ch. 533, § 2.

**Cross References —** State superintendent of public education, see § 37-3-9, 37-3-11.
Plan to encourage community involvement in schools, see § 37-7-337.
Curriculum generally, see § 37-13-1 et seq.
Statewide testing program, see § 37-16-1 et seq.
Accreditation of schools, see § 37-17-1 et seq.
School improvement plan, see § 37-18-5.

## § 37-18-5. School improvement plan; assistance team; community-based prekindergarten through higher education council.

(1) Based on the findings of the evaluation report and the results of the public meeting, the State Department of Education and the evaluation team leader shall assist the school principal and other local school officials in the development of a school improvement plan to improve its deficiencies.

(2) The school improvement plan shall be developed and approved by the principal of the School At-Risk, the superintendent of the local school district, the local school board and a majority of the teachers of the school, within a time period to be determined by the evaluation team. If the plan is not approved, the State Board of Education may approve and implement the plan in the school.

(3) The State Department of Education shall provide technical assistance and shall assist in identifying funding to the School At-Risk in the implementation of the school improvement plan, including the implementation of any recommended professional development plan, and the department may contract with the institutions of higher learning to provide such technical assistance. The assistance team shall collaborate with school and school district employees in the implementation and monitoring of the school improvement plan and the State Department of Education shall ensure that a report is issued monthly to the local school board and the local community-based advisory council.

(4) A school district that has been designated as failing as defined by the State Board of Education or a district with a School At-Risk shall also establish a community-based prekindergarten through higher education council com-

prised of a broad spectrum of the community, including economic developers, elected officials, civic leaders, business leaders, faith-based leaders, social services, nonprofit organizations, school attendance officers, law enforcement officials, health department officials, day care providers, librarians, parents and others with the knowledge and resources that can be leveraged to build strong communities. The State Board of Education shall develop procedures for appointments to the council, which shall not be appointed solely by the school board. The council will serve as a community-led group that is inclusive, accountable and required to publicly report progress to the community as a whole.

**HISTORY: Laws, 2000, ch. 533, § 3; Laws, 2000, ch. 610, §§ 3, 7; Laws, 2008, ch. 462, § 3; Laws, 2009, ch. 516, § 9; Laws, 2011, ch. 515, § 3, eff from and after July 2, 2011.**

**Editor's Notes —** Laws of 2000, ch. 610, § 7, provides:

"SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed."

The repeal had the effect of repealing the version of this section enacted by Laws of 2000, ch. 533, § 3.

Laws of 2009, ch. 516 § 1 provides:

"SECTION 1. This act shall be entitled and may be cited as the "Children First Act of 2009."

**Cross References —** Accreditation of schools, see § 37-17-1 et seq.

Evaluation team and report, see § 37-18-3.

Professional development plan, see § 37-18-7.

## § 37-18-7. Professional development plan for educators identified as needing improvement; declaration of state of emergency in school district under certain circumstances.

(1) As part of the school improvement plan for a School At-Risk, a professional development plan shall be prepared for those school administrators, teachers or other employees who are identified by the evaluation team as needing improvement. The State Department of Education shall assist the School At-Risk in identifying funds necessary to fully implement the school improvement plan.

(2) In the event a school continues to be designated a School At-Risk after three (3) years of implementing a school improvement plan, or in the event that more than fifty percent (50%) of the schools within the school district are designated as Schools At-Risk in any one (1) year, the State Board of Education may request that the Governor declare a state of emergency in that school district. Upon the declaration of the state of emergency by the Governor, the State Board of Education may take all such action for dealing with school districts as is authorized under subsection (12) or (15) of Section 37-17-6, including the appointment of an interim superintendent.

**HISTORY: Laws, 2000, ch. 533, § 4; Laws, 2000, ch. 610, §§ 4, 7; Laws, 2007, ch. 518, § 3; Laws, 2008, ch. 462, § 4; Laws, 2011, ch. 442, § 15; Laws, 2011, ch. 515, § 4; Laws, 2017, ch. 439, § 4, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (7) and (8). In (7), the words "classified as a Priority Schools" were changed to "classified as Priority Schools." In (8), the words "made available for review by teachers, administrator and other staff" were changed to "made available for review by teachers, administrators and other staff." The Joint Committee ratified the corrections at its May 16, 2002 meeting.

Section 15 of ch. 442, Laws of 2011, effective from and after July 1, 2011 (approved March 23, 2011), amended this section. Section 4 of ch. 515, Laws of 2011, effective July 2, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 515, Laws of 2011, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2) by substituting "under subsection (12) or (15) of Section 37-17-6" for "under subsection (11) or (14) of Section 37-17-6." The Joint Committee ratified the corrections at its August 12, 2019, meeting.

**Editor's Notes —** Laws of 2000, ch. 610, § 7, provides:

"SECTION 7. Sections 1, 2, 3, 4, 5, 6, 7 and 11 of House Bill No. 1134, 2000 Regular Session [Laws of 2000, ch. 533], which established an incentive grant program for improving schools and an accountability program for low-performing schools, are hereby repealed."

The repeal had the effect of repealing the version of this section enacted by Laws of 2000, ch. 533, § 4.

The United States Attorney General, by letter dated December 1, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2000, ch. 610, § 4.

On July 23, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 518, § 3.

**Cross References —** Training and education requirements for school board members, see § 37-7-306.

Statewide testing program, see § 37-16-1 et seq.

Accreditation of schools, see § 37-17-1 et seq.

School improvement plan, see § 37-18-5.

Schedule of teachers' salaries, see § 37-19-7.

# CHAPTER 19.

# TEACHER COMPENSATION

Sec.

37-19-1 through 37-19-5. Repealed.
37-19-7. Scale of teachers' salaries; experience increases; salary supplement for certain school employees.
37-19-9. Performance-Based compensation system.
37-19-10. School recognition program created for prospective salary supplements for teachers and staff; Legislative intent; purpose; school eligibility; School Recognition Program Fund.
37-19-11. Repealed.
37-19-13. Repealed.
37-19-15 through 37-19-19. Repealed.
37-19-20. Repealed.
37-19-21. Repealed.
37-19-22. Repealed.
37-19-23 and 37-19-24. Repealed.
37-19-25 through 37-19-53. Repealed.

## §§ 37-19-1 through 37-19-5. Repealed.

Repealed by Laws, 1997, ch. 612, § 30 effective July 1, 2002.

§ 31-19-1. [Codes, 1942, § 6248-01; Laws, 1953, Ex Sess ch. 14, § 1; Laws, 1958, ch. 306, § 1; Laws, 1960, ch. 295, § 1; Laws, 1968, ch. 392, § 1; Laws, 1970, ch. 367, § 1; Laws, 1971, ch. 363, § 1; Laws, 1977, ch. 486, § 1; Laws, 1978, ch. 513, § 2; Laws, 1986, ch. 492, § 98; Laws, 1988, ch. 464, § 2; Laws, 1988, ch. 487, § 4; Laws, 1989, ch. 374, § 1; Laws, 1989, ch. 437, § 1; Laws, 1989, ch. 585, § 1; Laws, 1991, ch. 534, § 3; Laws, 1997, ch. 545, § 24; Laws, 2000, ch. 433, § 1, eff from and after July 1, 2000.]

§ 37-19-3. [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1977, ch. 486, § 2.]

§ 37-19-5. [ Codes, 1942, §§ 6248-01, 6248-02, 6248-08; Laws, 1953, Ex Sess ch. 14, §§ 1, 2, 8; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, §§ 1, 2; Laws, 1960, ch. 295, §§ 1, 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, §§ 1, 2; Laws, 1970, ch. 367, §§ 1, 2; Laws, 1971, ch. 363, §§ 1, 2; Laws, 1972, ch. 503, § 1; Laws, 1975, ch. 322, § 1; Laws, 1977, ch. 486, § 3; Laws, 1978, ch. 513, § 3; Laws, 1982, ch. 493, § 7; Laws, 1984, ch. 500; Laws, 1986, ch. 492, § 99; Laws, 1988, ch. 487, § 5; Laws, 1989, ch. 580, § 1; Laws, 1991, ch. 415, § 3; Laws, 1991, ch. 534, § 4; Laws, 1992, ch. 519, § 7; Laws, 1993, ch. 602, § 4; Laws, 1994, ch. 472, § 1; Laws, 1994, ch. 477, § 2; Laws, 1994, ch. 581, § 53; Laws, 1996, ch. 358, § 1.]

**Editor's Notes** — Former § 37-19-1 provided definitions applicable to Chapter 19 of

Title 37.

Former § 37-19-3 provided that the total cost of the minimum education program shall be the sum of the amounts provided for in sections 37-19-5 through 37-19-33.

Former § 37-19-5 provided for the determination of teacher units.

## § 37-19-7. Scale of teachers' salaries; experience increases; salary supplement for certain school employees.

(1) The allowance in the Mississippi Adequate Education Program for teachers' salaries in each county and separate school district shall be determined and paid in accordance with the scale for teachers' salaries as provided in this subsection. For teachers holding the following types of licenses or the equivalent as determined by the State Board of Education, and the following number of years of teaching experience, the scale shall be as follows:

**2019-2020 MINIMUM SALARY SCHEDULE**

| Years Exp. | AAAA | AAA | AA | A |
|---|---|---|---|---|
| 0 | 40,608.00 | 39,444.00 | 38,280.00 | 35,890.00 |
| 1 | 40,608.00 | 39,444.00 | 38,280.00 | 35,890.00 |
| 2 | 40,608.00 | 39,444.00 | 38,280.00 | 35,890.00 |
| 3 | 41,402.00 | 40,171.00 | 38,940.00 | 36,385.00 |
| 4 | 42,196.00 | 40,898.00 | 39,600.00 | 36,880.00 |
| 5 | 42,990.00 | 41,625.00 | 40,260.00 | 37,375.00 |
| 6 | 43,784.00 | 42,352.00 | 40,920.00 | 37,870.00 |
| 7 | 44,578.00 | 43,079.00 | 41,580.00 | 38,365.00 |
| 8 | 45,372.00 | 43,806.00 | 42,240.00 | 38,860.00 |
| 9 | 46,166.00 | 44,533.00 | 42,900.00 | 39,355.00 |
| 10 | 46,960.00 | 45,260.00 | 43,560.00 | 39,850.00 |
| 11 | 47,754.00 | 45,987.00 | 44,220.00 | 40,345.00 |
| 12 | 48,548.00 | 46,714.00 | 44,880.00 | 40,840.00 |
| 13 | 49,342.00 | 47,441.00 | 45,540.00 | 41,335.00 |
| 14 | 50,136.00 | 48,168.00 | 46,200.00 | 41,830.00 |
| 15 | 50,930.00 | 48,895.00 | 46,860.00 | 42,325.00 |
| 16 | 51,724.00 | 49,622.00 | 47,520.00 | 42,820.00 |
| 17 | 52,518.00 | 50,349.00 | 48,180.00 | 43,315.00 |
| 18 | 53,312.00 | 51,076.00 | 48,840.00 | 43,810.00 |
| 19 | 54,106.00 | 51,803.00 | 49,500.00 | 44,305.00 |
| 20 | 54,900.00 | 52,530.00 | 50,160.00 | 44,800.00 |
| 21 | 55,694.00 | 53,257.00 | 50,820.00 | 45,295.00 |
| 22 | 56,488.00 | 53,984.00 | 51,480.00 | 45,790.00 |
| 23 | 57,282.00 | 54,711.00 | 52,140.00 | 46,285.00 |
| 24 | 58,076.00 | 55,438.00 | 52,800.00 | 46,780.00 |
| 25 | 60,930.00 | 58,225.00 | 55,520.00 | 49,335.00 |
| 26 | 61,724.00 | 58,952.00 | 56,180.00 | 49,830.00 |
| 27 | 62,518.00 | 59,679.00 | 56,840.00 | 50,325.00 |
| 28 | 63,312.00 | 60,406.00 | 57,500.00 | 50,820.00 |
| 29 | 64,106.00 | 61,133.00 | 58,160.00 | 51,315.00 |

| Years Exp. | AAAA | AAA | AA | A |
|---|---|---|---|---|
| 30 | 64,900.00 | 61,860.00 | 58,820.00 | 51,810.00 |
| 31 | 65,694.00 | 62,587.00 | 59,480.00 | 52,305.00 |
| 32 | 66,488.00 | 63,314.00 | 60,140.00 | 52,800.00 |
| 33 | 67,282.00 | 64,041.00 | 60,800.00 | 53,295.00 |
| 34 | 68,076.00 | 64,768.00 | 61,460.00 | 53,790.00 |
| 35 & above | 68,870.00 | 65,495.00 | 62,120.00 | 54,285.00 |

It is the intent of the Legislature that any state funds made available for salaries of licensed personnel in excess of the funds paid for such salaries for the 1986-1987 school year shall be paid to licensed personnel pursuant to a personnel appraisal and compensation system implemented by the State Board of Education. The State Board of Education shall have the authority to adopt and amend rules and regulations as are necessary to establish, administer and maintain the system.

All teachers employed on a full-time basis shall be paid a minimum salary in accordance with the above scale. However, no school district shall receive any funds under this section for any school year during which the local supplement paid to any individual teacher shall have been reduced to a sum less than that paid to that individual teacher for performing the same duties from local supplement during the immediately preceding school year. The amount actually spent for the purposes of group health and/or life insurance shall be considered as a part of the aggregate amount of local supplement but shall not be considered a part of the amount of individual local supplement.

The level of professional training of each teacher to be used in establishing the salary allotment for the teachers for each year shall be determined by the type of valid teacher's license issued to those teachers on or before October 1 of the current school year. Provided, however, that school districts are authorized, in their discretion, to negotiate the salary levels applicable to certificated employees who are receiving retirement benefits from the retirement system of another state, and the annual experience increment provided above in Section 37-19-7 shall not be applicable to any such retired certificated employee.

(2)(a) The following employees shall receive an annual salary supplement in the amount of Six Thousand Dollars ($6,000.00), plus fringe benefits, in addition to any other compensation to which the employee may be entitled:

(i) Any licensed teacher who has met the requirements and acquired a Master Teacher certificate from the National Board for Professional Teaching Standards and who is employed by a local school board or the State Board of Education as a teacher and not as an administrator. Such teacher shall submit documentation to the State Department of Education that the certificate was received prior to October 15 in order to be eligible for the full salary supplement in the current school year, or the teacher shall submit such documentation to the State Department of Education prior to February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year.

(ii) A licensed nurse who has met the requirements and acquired a certificate from the National Board for Certification of School Nurses, Inc., and who is employed by a local school board or the State Board of Education as a school nurse and not as an administrator. The licensed school nurse shall submit documentation to the State Department of Education that the certificate was received before October 15 in order to be eligible for the full salary supplement in the current school year, or the licensed school nurse shall submit the documentation to the State Department of Education before February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year. Provided, however, that the total number of licensed school nurses eligible for a salary supplement under this subparagraph (ii) shall not exceed thirty-five (35).

(iii) Any licensed school counselor who has met the requirements and acquired a National Certified School Counselor (NCSC) endorsement from the National Board of Certified Counselors and who is employed by a local school board or the State Board of Education as a counselor and not as an administrator. Such licensed school counselor shall submit documentation to the State Department of Education that the endorsement was received prior to October 15 in order to be eligible for the full salary supplement in the current school year, or the licensed school counselor shall submit such documentation to the State Department of Education prior to February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year. However, any school counselor who started the National Board for Professional Teaching Standards process for school counselors between June 1, 2003, and June 30, 2004, and completes the requirements and acquires the Master Teacher certificate shall be entitled to the master teacher supplement, and those counselors who complete the process shall be entitled to a one-time reimbursement for the actual cost of the process as outlined in paragraph (b) of this subsection.

(iv) Any licensed speech-language pathologist and audiologist who has met the requirements and acquired a Certificate of Clinical Competence from the American Speech-Language-Hearing Association and any certified academic language therapist (CALT) who has met the certification requirements of the Academic Language Therapy Association and who is employed by a local school board or is employed by a state agency under the State Personnel Board. The licensed speech-language pathologist and audiologist and certified academic language therapist shall submit documentation to the State Department of Education that the certificate or endorsement was received before October 15 in order to be eligible for the full salary supplement in the current school year, or the licensed speech-language pathologist and audiologist and certified academic language therapist shall submit the documentation to the State Department of Education before February 15 in order to be eligible for a prorated salary supplement beginning with the second term of the school year. However, the total number of certified academic language therapists eligible for a salary supplement under this paragraph (iv) shall not exceed twenty (20).

(b) An employee shall be reimbursed for the actual cost of completing each component of acquiring the certificate or endorsement, excluding any costs incurred for postgraduate courses, not to exceed Five Hundred Dollars ($500.00) for each component, not to exceed four (4) components, for a teacher, school counselor or speech-language pathologist and audiologist, regardless of whether or not the process resulted in the award of the certificate or endorsement. A local school district or any private individual or entity may pay the cost of completing the process of acquiring the certificate or endorsement for any employee of the school district described under paragraph (a), and the State Department of Education shall reimburse the school district for such cost, regardless of whether or not the process resulted in the award of the certificate or endorsement. If a private individual or entity has paid the cost of completing the process of acquiring the certificate or endorsement for an employee, the local school district may agree to directly reimburse the individual or entity for such cost on behalf of the employee.

(c) All salary supplements, fringe benefits and process reimbursement authorized under this subsection shall be paid directly by the State Department of Education to the local school district and shall be in addition to its minimum education program allotments and not a part thereof in accordance with regulations promulgated by the State Board of Education. Local school districts shall not reduce the local supplement paid to any employee receiving such salary supplement, and the employee shall receive any local supplement to which employees with similar training and experience otherwise are entitled. However, an educational employee shall receive the salary supplement in the amount of Six Thousand Dollars ($6,000.00) for only one (1) of the qualifying certifications authorized under paragraph (a) of this subsection. No school district shall provide more than one (1) annual salary supplement under the provisions of this subsection to any one individual employee holding multiple qualifying national certifications.

(d) If an employee for whom such cost has been paid, in full or in part, by a local school district or private individual or entity fails to complete the certification or endorsement process, the employee shall be liable to the school district or individual or entity for all amounts paid by the school district or individual or entity on behalf of that employee toward his or her certificate or endorsement.

(3) The following employees shall receive an annual salary supplement in the amount of Four Thousand Dollars ($4,000.00), plus fringe benefits, in addition to any other compensation to which the employee may be entitled:

Effective July 1, 2016, if funds are available for that purpose, any licensed teacher who has met the requirements and acquired a Master Teacher Certificate from the National Board for Professional Teaching Standards and who is employed in a public school district located in one (1) of the following counties: Claiborne, Adams, Jefferson, Wilkinson, Amite, Bolivar, Coahoma, Leflore, Quitman, Sharkey, Issaquena, Sunflower, Washington, Holmes, Yazoo and Tallahatchie. The salary supplement awarded under the provisions of this subsection (3) shall be in addition to the salary supplement awarded under the provisions of subsection (2) of this section.

Teachers who meet the qualifications for a salary supplement under this subsection (3) who are assigned for less than one (1) full year or less than full time for the school year shall receive the salary supplement in a prorated manner, with the portion of the teacher's assignment to the critical geographic area to be determined as of June 15th of the school year.

(4)(a) This section shall be known and may be cited as the "Mississippi Performance-Based Pay (MPBP)" plan. In addition to the minimum base pay described in this section, only after full funding of MAEP and if funds are available for that purpose, the State of Mississippi may provide monies from state funds to school districts for the purposes of rewarding certified teachers, administrators and nonlicensed personnel at individual schools showing improvement in student test scores. The MPBP plan shall be developed by the State Department of Education based on the following criteria:

(i) It is the express intent of this legislation that the MPBP plan shall utilize only existing standards of accreditation and assessment as established by the State Board of Education.

(ii) To ensure that all of Mississippi's teachers, administrators and nonlicensed personnel at all schools have equal access to the monies set aside in this section, the MPBP program shall be designed to calculate each school's performance as determined by the school's increase in scores from the prior school year. The MPBP program shall be based on a standardized scores rating where all levels of schools can be judged in a statistically fair and reasonable way upon implementation. At the end of each year, after all student achievement scores have been standardized, the State Department of Education shall implement the MPBP plan.

(iii) To ensure all teachers cooperate in the spirit of teamwork, individual schools shall submit a plan to the local school district to be approved before the beginning of each school year beginning July 1, 2008. The plan shall include, but not be limited to, how all teachers, regardless of subject area, and administrators will be responsible for improving student achievement for their individual school.

(b) The State Board of Education shall develop the processes and procedures for designating schools eligible to participate in the MPBP. State assessment results, growth in student achievement at individual schools and other measures deemed appropriate in designating successful student achievement shall be used in establishing MPBP criteria. The State Board of Education shall develop the MPBP policies and procedures and report to the Legislature and Governor by December 1, 2006.

(5)(a) Beginning in the 2008-2009 school year, if funds are available for that purpose, each school in Mississippi shall have mentor teachers, as defined by Sections 37-9-201 through 37-9-213, who shall receive additional base compensation provided for by the State Legislature in the amount of One Thousand Dollars ($1,000.00) per each beginning teacher that is being mentored. The additional state compensation shall be limited to those mentor teachers that provide mentoring services to beginning teachers. For the purposes of such funding, a beginning teacher shall be defined as any teacher in any school in Mississippi that has less than one (1) year of classroom experience teaching in a public school. For the purposes of such funding, no full-time academic teacher shall mentor more than two (2) beginning teachers.

(b) To be eligible for this state funding, the individual school must have a classroom management program approved by the local school board.

(6) Effective with the 2014-2015 school year, the school districts participating in the Pilot Performance-Based Compensation System pursuant to Section 37-19-9 may award additional teacher and administrator pay based thereon.

**HISTORY: Former 1972 Code § 37-19-7 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1973, ch. 398, § 1; Laws, 1975, ch. 322, § 2] recodified as § 37-19-21 by Laws, 1977, ch. 486, § 11. Former 1972 Code § 37-19-5, subsections (2) and (5) [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960 ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20, § 1; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 1; Laws, 1971, ch. 363, § 2] amended and codified as § 37-19-7 by 1977, ch. 486, § 4; Laws, 1978, ch. 513, § 4; Laws, 1979, ch. 484, § 1; Laws, 1980, ch. 509, § 1; Laws, 1981, ch. 517, § 1; Laws, 1982, Ex Sess, ch. 17, § 23; Laws, 1985, ch. 351, § 29; Laws, 1988, ch. 487, § 1; Laws, 1991, ch. 558 § 9; Laws, 1992, ch. 524, § 12; Laws, 1993, ch. 618, § 1; Laws, 1994, ch. 581, § 10; Laws, 1995, ch. 617, § 1; Laws, 1996, ch. 434, § 1; Laws, 1997, ch. 545, § 25; Laws, 1997, ch. 508, § 1; Laws, 1998, ch. 533, § 1; Laws, 1999, ch. 494, § 1; Laws, 1999, ch. 596, § 1; Laws, 2000, ch. 533, § 8; Laws 2001, 1st Ex Sess, ch. 1, § 2; Laws, 2004, ch. 546, § 1; Laws, 2006, ch. 504, § 2; Laws, 2007, ch. 523, § 1; Laws, 2008, ch. 556, § 1; reenacted without change, Laws, 2009, ch. 345, § 25; Laws, 2009, ch. 508, § 2; Laws, 2010, ch. 486, § 5; Laws, 2011, ch. 442, § 16; Laws, 2013, ch. 494, § 7; Laws, 2014, ch. 503, § 1; Laws, 2016, ch. 441, § 1, eff from and after July 1, 2016; Laws, 2019, ch. 461, § 1, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of ch. 494, Laws of 1999, effective from and after July 1, 1999, amended this section. Section 1 of ch. 596, Laws of 1999, effective from and after June 30, 1999, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 494, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 2 of ch. 508, Laws of 2009, effective from and after July 1, 2009 (approved April 7, 2009), amended this section. Section 25 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 2 of ch. 508, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes —** Laws of 2001, 1st Ex Sess, ch. 1, § 1, effective July 23, 2001, provides:

"SECTION 1. (1) Recognizing teaching as a profession as well as a vocation, it is the intent of the Legislature, by the passage of House Bill No. 1, 2001 First Extraordinary Session, to clarify the commitment of the House of Representatives and Senate of the State of Mississippi to increase the salaries of public school teachers during the 2001-2002 school year and in each of the next four (4) succeeding years. It is further the intent of the Legislature, by the passage of House Bill No. 1, 2001 First Extraordinary Session, to demonstrate its long-term commitment to improving education in the State of Mississippi.

"(2) The school board of each school district shall provide notice of the legislative intent expressed in subsection (1) of this section to each teacher and assistant teacher. The notice must be in writing and attached to or provided with at least one (1) salary payment to each teacher and assistant teacher before the expiration of sixty (60) days after the passage of House Bill No. 1, 2001 First Extraordinary Session."

Laws of 2006, ch. 504 § 1(1), codified at § 37-161-1(1), provides:

"SECTION 1. This act shall be known and may be referred to as the 'Mississippi Education Reform Act of 2006.' "

Section 19 of Chapter 504, Laws of 2006, provided for the repeal of this section, effective June 30, 2009. Section 1 of Chapter 345, Laws of 2009, amended Section 19 of Chapter 504, Laws of 2006, to remove the repealer for this section.

Laws of 2013, ch. 494, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Education Works Program.' "

Chapter 494, Laws of 2013, amended Sections 37-3-53, 37-16-7, 37-18-1 and 37-19-7 and enacted Sections 37-19-9 and 37-106-37.

**Amendment Notes —** The 2019 amendment, in (1), deleted the minimum salary schedule for 2014-2015 and 2015-2016; and added the minimum salary schedule for 2019-2020; and in (3), inserted "Holmes, Yazoo and Tallahatchie," and made a related change.

**Cross References —** School Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Applicability of this section to a teacher or administrator entering school system for first time, see § 37-3-2.

Local school board not required to comply with subsection (1) of this section in regard to reducing local supplements and the number of personnel, see § 37-9-18.

Salary to be shown in contract of teacher paid in whole or in part with minimum education program funds, see § 37-9-23.

Applicability of this section to certificated employees employed after July 1, 2009, who are receiving retirement benefits from the retirement system of another state, see § 37-9-33.

Compensation of superintendents, principals, teachers or licensed employees, generally, see § 37-9-37 et seq.

Reimbursement for teacher salaries in administrator sabbatical program, see § 37-9-77.

Beginning teacher support program, see §§ 37-9-201 through 37-9-213.

Superior-Performing, Exemplary and Priority Schools Programs, see § 37-18-1 et seq.

Mississippi Adequate Education Program, see § 37-151-1 et seq.

Mississippi Education Reform Act of 2006, see § 37-161-1 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. Nonrenewal of contract.
2.-10. [Reserved for future use.]
11. Under former law.

**1. Nonrenewal of contract.**

Financial adviser found that elimination of personnel and positions was required as part of the remedy for the school district's deficit. The school district had the authority to alter the offer of renewed employment that had already been made to the assistant principal even after the deadline that would usually apply to school employee contract renewal. McKnight v. Mound Bayou Pub. Sch. Dist., 879 So. 2d 493, 2004 Miss. App. LEXIS 223 (Miss. Ct. App. 2004).

**2.-10. [Reserved for future use.]**

**11. Under former law.**

Since the 1953 amendment of Code 1942, § 6248-02, the county superintendent is accountable to the school fund for payments made to teachers in excess of amounts provided by statute, even though he did so in good faith and through honest error. Golding v. Latimer, 239 Miss. 163, 121 So. 2d 615, 1960 Miss. LEXIS 277 (Miss. 1960).

Code 1942, §§ 6246-01 et seq., 6247-01 et seq., 6248-01 et seq., and 6274-01 et seq., are in pari materia with Code 1942, §§ 6328-01 et seq. Adams County v. State Educational Finance Com., 229 Miss. 566, 91 So. 2d 524, 1956 Miss. LEXIS 641 (Miss. 1956).

## OPINIONS OF THE ATTORNEY GENERAL

No added compensation in the form of bonuses or incentive pay is permitted if not authorized by this section. Pate, January 15, 1999, A.G. Op. #98-0775.

A school board may set the salary for any superintendent, principal, or licensed/certificated employee at the amount the board deems appropriate. Mayfield, July 19, 2002, A.G. Op. #02-0291.

A school district may not grant teachers added compensation in the form of bonuses or incentive pay not authorized by statute. Adams, Feb. 21, 2003, A.G. Op. #03-0045.

If a school board determines that the partial time taught by a teacher in separate school years would total at least nine months of actual teaching then the requirements for a year of teaching experience are met; however, if it is clear that the employee was hired by the school district at a specific salary level and was paid accordingly for the work performed, the district may adjust the employee's level of experience prospectively, but there is no authority that would allow the district to award retroactive pay for work that has already been performed and for which an agreed upon compensation had already been provided. Chaney, Apr. 18, 2003, A.G. Op. #03-0150.

For a teacher making in excess of the minimum salary who is currently receiving a local supplement and who is due for a raise under this section, assuming that the teacher is performing the same duties, the local supplement to that individual teacher cannot be reduced. However, in those counties in which there has been a reduction in adequate education program allocations, the provisions of § 37-151-87 would permit a reduction in aggregate amount of local supplements within the entire school district. However, no individual teacher's local supplement could be reduced. Chaney, June 18, 2004, A.G. Op. 04-0243.

Because a school district may not grant additional compensation or incentives to teachers that are not authorized by statute, a "sign-in bonus" may not be paid. Sanders, Aug. 8, 2005, A.G. Op. 05-0287.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 183, 184.

**CJS.**
78 C.J.S., Schools and School Districts §§ 650, 665-681.

**Law Reviews.**
Public Sector Collective Bargaining in Mississippi: An Argument for Acceptance. 56 Miss. L. J. 379, August, 1986.

**Practice References.**
Education Law (Matthew Bender).

## § 37-19-9. Performance-Based compensation system.

(1) There is established a Pilot-Performance-Based Compensation System for school years 2013-2015.

(a) Beginning with the 2013-2014 school year, a pilot study will be conducted in Lamar County, Clarksdale, Gulfport and Rankin County School Districts as outlined in subsection (2) of this section. Measures of effective instruction, instrumentation, student learning growth and performance evaluation results will be collected. Reporting data from the pilot study will be disseminated to all school districts.

(b) The results of the pilot study in the four (4) districts in combination with Teacher Improvement Fund (TIF), School Improvement Grant (SIG), and Appalachian Regional Commission (ARC) Districts will be collected and analyzed by the Mississippi State University Research and Curriculum Unit and reported to the Department of Education for policy recommendations.

Effective with the 2014-2015 school year, the school districts participating in the Pilot Performance-Based Compensation System pursuant to this section may award additional teacher and administrator pay based thereon.

(c) Beginning with the 2015-2016 school year, the Department of Education will develop proposed legislation based on pilot results for statewide implementation of a Performance-Based Compensation System.

(d) Recommended legislation will be reported to the Chairs of the House and Senate Education Committees and the Governor by November 30, 2015, for consideration during the 2016 Regular Session of the Legislature.

(2) The statewide performance compensation system for instructional personnel and school administrators must:

(a) Contain a qualitative measure of teacher effectiveness, a quantitative measure of student performance and a quantitative measure of student learning growth.

(b) Be designed by districts to support achievement of district goals in line with realization of the district's vision.

(c) Include individual, school and district achievement goals and measures.

(d) Be designed to support effective instruction and student learning growth and use performance evaluation results when developing district and school level improvement plans.

(e) Provide appropriate instruments, procedures and criteria for continuous quality improvement of the professional skills of instructional personnel and school administrators and use performance evaluation results when identifying professional development.

(f) Include a mechanism to examine performance data from multiple sources, including opportunities for parents to provide input into employee performance evaluations when appropriate.

(g) Identify those teaching fields for which special evaluation procedures and criteria are necessary.

(h) Differentiate among four (4) levels of performance as follows:

(i) Highly effective.

(ii) Effective.

(iii) Needs improvement or, for instructional personnel in the first three (3) years of employment who need improvement, developing.

(iv) Unsatisfactory.

(i) Provide for training programs that are based upon guidelines provided by the department to ensure that all individuals with evaluation responsibilities understand the proper use of the evaluation criteria and procedures.

(j) Include a process for monitoring and evaluating the effective and consistent use of the evaluation criteria by employees with evaluation responsibilities.

(k) Include a process for monitoring and evaluating the effectiveness of the system itself in improving instruction and student learning. In addition, each district school board may establish a peer assistance process. This process may be a part of the regular evaluation system or used to assist employees placed on performance probation, newly hired classroom teachers, or employees who request assistance.

**HISTORY: Laws, 2013, ch. 494, § 4, effective July 1, 2013.**

**Editor's Notes —** A former § 37-19-9 [Former 1972 Code § 37-19-9 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1973, ch. 398, § 1; Laws, 1975, ch. 323] recodified as § 37-19-23 by Laws, 1977, ch. 486, § 12. Former 1972 Code § 37-19-5(3) [1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2] amended and recodified as § 37-19-9 by 1977, ch. 486, § 5; Laws, 1997, ch. 545, § 2; repealed, Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.] provided for minimum teaching certificates.

Laws of 2013, ch. 494, s. 1, provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Education Works Program."

Chapter 494, Laws of 2013, amended Sections 37-3-53, 37-16-7, 37-18-1 and 37-19-7 and enacted Sections 37-19-9 and 37-106-37.

### § 37-19-10. School recognition program created for prospective salary supplements for teachers and staff; Legislative intent; purpose; school eligibility; School Recognition Program Fund.

(1) The Legislature finds that there is a need for a performance incentive program for outstanding teachers and staff in highly productive schools.

(2) Beginning with the 2016-2017 school year, the School Recognition Program is created to provide financial awards to public schools that:

(a) Sustain high performance by earning a school accountability rating of "A" which shall be funded at One Hundred Dollars ($100.00) per pupil in average daily attendance;

(b) Sustain high performance by earning a school accountability rating of "B" which shall be funded at Seventy-five Dollars ($75.00) per pupil in average daily attendance; or

(c) Demonstrate exemplary performance by improving at least one (1) letter grade, which shall be funded at One Hundred Dollars ($100.00) per pupil in average daily attendance.

(3) All public schools, including charter schools, earning the appropriate school rating are eligible to participate in the program.

(4) School recognition awards must be used for nonrecurring salary supplements to the teachers and staff employed in the school receiving the financial award. Any nonrecurring salary supplements paid to teachers and staff shall be prospective, shall be paid over the remainder of the year, and shall not be considered part of the local supplement. For contracted individuals, there shall be an amendment to the existing contract.

(5) School recognition awards shall not be used for administrators.

(6) There is hereby created in the State Treasury, the School Recognition Program Fund which shall be used by the State Department of Education, depending on the availability of funds as appropriated, to provide financial awards to schools under this section. It shall be the duty of the State Department of Education to file with the State Treasurer and the State Fiscal Officer such data and information as may be required to enable the said State Treasurer and State Fiscal Officer to distribute the School Recognition Program Funds by electronic funds transfer to the several school districts at the time required and provided under the provisions of this section. Such data and information so filed shall show in detail the amount of funds to which each school district is entitled from the School Recognition Program Fund. Such data and information so filed may be revised from time to time as necessitated by law. At the time provided by law, the State Treasurer and the State Fiscal Officer shall distribute to the several school districts the amounts to which they are entitled from the School Recognition Program Fund as provided by this section. Such distribution shall be made by electronic funds transfer to the depositories of the several school districts designated in writing to the State Treasurer based upon the data and information supplied by the State Department of Education for such distribution. In such instances, the State Treasurer

shall submit a request for an electronic funds transfer to the State Fiscal Officer, which shall set forth the purpose, amount and payees, and shall be in such form as may be approved by the State Fiscal Officer so as to provide the necessary information as would be required for a requisition and issuance of a warrant. A copy of the record of said electronic funds transfers shall be transmitted by the school district depositories to the Treasurer, who shall file duplicates with the State Fiscal Officer. The Treasurer and State Fiscal Officer shall jointly promulgate regulations for the utilization of electronic funds transfers to school districts from the School Recognition Program Fund.

(7) It is the intent of the Legislature to develop a plan to reward high-performing teachers in schools with an accountability rating of "C," "D" and "F" by July 1, 2016.

**HISTORY: Laws, 2014, ch. 503, § 2, eff from and after July 1, 2014.**

## § 37-19-11. Repealed.

Repealed by Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.

[Former 1972 Code § 37-19-11 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex. Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1973, ch. 398, § 1] recodified as § 37-19-31 by Laws, 1977, ch. 486, § 16. Former 1972 Code § 37-19-5(4) [1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2] amended and recodified as § 37-19-11 by Laws, 1977, ch. 486, § 6;; Laws, 1981, ch. 517, § 3; Laws, 1982, Ex Sess, ch. 17, § 24; Laws, 1986, ch. 507, § 6.]

**Editor's Notes —** Former § 37-19-11 provided for a reduction of local supplement or support from ad valorem taxation.

## § 37-19-13. Repealed.

Repealed by Laws, 1997, ch. 545, § 30, eff from and after passage (approved April 10, 1997). Also repealed by Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.

[Former 1972 Code § 37-19-13 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2] recodified as § 37-19-33 by Laws, 1977, ch. 486, § 17. New § 37-19-13 enacted, Laws, 1977, ch. 486, § 7; Laws, 1988, ch. 466, § 3].

**Editor's Notes —** Section 30 of ch. 545, Laws, 1997, repealed this section, effective from and after passage (approved April 10, 1997). Subsequently, Section 30 of ch. 612, Laws, 1997, also repealed this section, effective July 1, 2002.

Former § 37-19-13 provided for the examination of applicants for teaching positions.

## §§ 37-19-15 through 37-19-19. Repealed.

Repealed by Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.

§ 37-19-15. [Former 1972 Code § 37-19-15 [Codes, 1942, § 6248-03; Laws, 1953, Ex Sess ch. 14, § 3; Laws, 1954, ch. 262; Laws, 1958, ch. 306, § 3; Laws, 1960, ch. 295, § 3; Laws, 1968, ch. 392, § 3; Laws, 1970, ch. 367; ch. 368, § 1; ch. 369; Laws, 1971, ch. 363, § 3; Laws, 1974, ch. 383, §§ 1, 2] recodified as § 37-19-35 by 1977, ch. 486, § 18. Former 1972 Code § 37-19-5 (6) [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 1; Laws, 1971, ch. 363, § 2] amended and recodified as § 37-19-15 by Laws, 1977, ch. 486, § 8; Laws, 1978, ch. 513, § 5.]

§ 37-19-17. [Former 1972 Code § 37-19-17 [Codes, 1942, § 62-48-04; Laws, 1953, Ex Sess ch. 14, § 4; Laws, 1968, ch. 392, § 4; Laws, 1973, ch. 395, § 1] recodified as § 37-19-37 by 1977, ch. 486. § 19. Former 1972 Code § 37-19-5 (7) [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960 ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20, § 1; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 1; Laws, 1971, ch. 363, § 2] amended and recodified as § 37-19-17 by Laws, 1977, ch. 486, § 9; Laws, 1986, ch. 492, § 100; Laws, 1991, ch. 534, § 5; Laws, 1992, ch. 445, § 2; Laws, 1997, ch. 545, § 26.]

§ 37-19-19. [Former 1972 Code § 37-19-19 [Codes, 1942, § 6248-04.5; Laws, 1955, Ex Sess ch. 45] repealed by Laws, 1973, ch. 395, § 3, eff from and after July 1, 1973. Former 1972 Code § 37-19-5(8) [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960 ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20, § 1; Laws, 1964, ch. 386; Laws, 1965, ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 1; Laws, 1971, ch. 363, § 2] recodified as § 37-19-19 by Laws, 1977, ch. 486, § 10; Laws, 1986, ch 492, § 101; Laws, 1986, ch. 500, § 16; Laws, 1991, ch. 534, § 6.]

**Editor's Notes** — Former § 37-19-15 provided for salary payments from other funds.

Former § 37-19-17 provided for salary schedules.

Former § 37-19-19 provided for an allotment for superintendents' and principals' salaries.

For provisions in effect after July 1, 2002, see Mississippi Adequate Education Program, §§ 37-151-1 et seq.

## § 37-19-20. Repealed.

Repealed by Laws, 2002, ch. 551, § 6, eff from and after July 1, 2002 (enacted April 10, 2002 without Governor's signature).

[Laws, 1999, ch. 561, § 1, eff from and after July 1, 1999.]

**Editor's Notes** — Former § 37-19-20 provided certain allocations for long-term substitute teachers under the Minimum Education Program.

## § 37-19-21. Repealed.

Repealed by Laws, 1997, ch. 612, § 30, effective July 1, 2002.

[Former 1972 Code § 37-19-21 [Codes, 1942, § 6248-05; Laws, 1953, 1953, Ex Sess ch. 14, § 5; Laws, 1956, ch. 283, § 1; Laws, 1973, ch. 395, § 2] recodified as § 37-19-39 by Laws, 1977, ch. 486, § 20. Former 1972 Code § 37-19-7 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1973, ch. 398, § 1; Laws, 1975, ch. 322, § 2] amended and recodified as § 37-19-21 by Laws, 1977, ch. 486, § 11; Laws, 1978, ch. 513, § 6; Laws, 1979, ch. 484, § 2; Laws, 1980, ch. 509, § 2; Laws, 1981, ch. 517, § 2; Laws, 1982, Ex Sess, ch. 17, § 25; Laws, 1985, ch. 351, § 30; Laws, 1988, ch. 487, § 2; Laws, 1991, ch. 558 § 11; Laws, 1993, ch. 618, § 2; Laws, 1994, ch. 581, § 11; Laws, 1995, ch. 617, § 3; Laws, 1999, ch. 494, § 2; Laws, 2000, ch. 533, § 9; Laws, 2001, 1st Ex Sess, ch. 1, § 3, eff from and after passage (approved July 23, 2001).]

**Editor's Notes** — Former § 37-19-21 provided for an allotment for supportive services.

## § 37-19-22. Repealed.

Repealed by Laws, 2002, ch. 551, § 6, eff from and after July 1, 2002 (enacted April 10, 2002, without the Governor's signature).

[Laws, 1993, ch. 543, § 1; Laws, 1994, ch. 555, § 2; Laws, 1994, ch. 607, § 18, eff from and after July 2, 1994.]

**Editor's Notes** — Former § 37-19-22 provided certain allocations for alternative school programs under the Minimum Education Program.

## § 37-19-23. Repealed.

Repealed by Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.

§ 37-19-23. [Former 1972 Code § 37-19-23 [Codes, 1942, §§ 6534-05, 6534-12; Laws, 1953, Ex Sess ch. 27, §§ 5, 12] recodified as § 37-19-41 by Laws, 1977, ch. 486, § 21. Former 1972 Code § 37-19-9 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1973, ch. 398, § 1; Laws, 1975, ch. 323] amended and recodified as § 37-19-23 by Laws, 1977, ch. 486, § 12; Laws, 1986, ch. 492, § 102; Laws, 1988, ch. 344; Laws, 1990, ch. 535, § 6; Laws, 1991, ch. 534, § 7; Laws, 1996, ch. 316, § 1.]

**Editor's Notes** — Former § 37-19-23 provided for a transportation allowance.

For provisions in effect after July 1, 2002, see Mississippi Adequate Education Program, § 37-151-1 et seq.

## § 37-19-24. Repealed.

Repealed by Laws, 1999, ch. 494, § 4, eff from and after July 1, 2002.

§ 37-19-24. [Laws, 1999, ch. 494, § 4, eff from and after July 1, 1999.]

**Editor's Notes** — Former § 37-19-24 provided an allotment for local cost of teacher salary increases.

## §§ 37-19-25 through 37-19-53. Repealed.

Repealed by Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.

§ 37-19-25. [Former 1972 Code § 37-19-25 [Codes, 1942, §§ 6248-11, 6534-06; Laws, 1953, Ex Sess ch. 14, § 11; Laws, 1953, Ex Sess ch. 27, § 6] recodified as § 37-19-43 by Laws, 1977, ch. 486, § 22. Former 1972 Code § 37-19-31 [Codes, 1942, § 6248-06; Laws, 1953, Ex Sess ch. 14, § 6] amended and recodified as § 37-19-25 by Laws, 1977, ch. 486, § 13; Laws, 1986, ch. 492, § 103.]

§ 37-19-27. [Former 1972 Code § 37-19-45 [Codes, 1942, § 6534-16; Laws, 1953, Ex Sess ch. 27, § 16] recodified as § 37-19-45 by Laws, 1977, ch. 486, § 23. Former 1972 Code § 37-19-33 [Codes, 1942, §§ 6248-07, 6336-03.5; Laws, 1953, Ex Sess ch. 14, § 7; Laws, 1954, Ex Sess ch. 25, §§ 1, 2 (¶¶ 1, 2); Laws, 1960, ch. 296, §§ 1, 2; Laws, 1960, ch. 306, § 2; Laws, 1962, ch. 357, § 1] amended and recodified as § 37-19-27 by Laws, 1977, ch. 486, § 14; Laws, 1986, ch. 492, § 104; Laws, 1989, ch. 508, § 3; Laws, 1990, ch. 565, § 3; Laws, 1991, ch. 349, § 3.]

§ 37-19-29. [Former 1972 Code § 37-19-29 [Codes, 1942, § 6248-12; Laws, 1953, Ex Sess ch. 14, § 12; Laws, 1955, Ex Sess ch. 46, § 1; Laws, 1960, ch. 292; Laws, 1976, ch. 413, §§ 1, 2] recodified as § 37-19-47 by Laws, 1977, ch. 486, § 24. Former 1972 Code § 37-19-35 [Codes, 1942, § 6248-10;1953, Ex Sess, ch. 14, § 10] amended and recodified as § 37-19-29 by Laws, 1977, ch. 486, § 15.]

§ 37-19-31. [Former 1972 Code § 37-19-31 [Codes, 1942, § 6248-06; Laws, 1953, Ex Sess ch. 14, § 6] recodified as § 37-19-25 by Laws, 1977, ch. 486, § 13. Former 1972 Code § 37-19-11 [Codes, 1942, § 6248-02;1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2; Laws, 1960, ch. 295, § 2, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; Laws, 1971, ch. 363, § 2; Laws, 1973, ch. 398, § 11] amended and recodified as § 37-19-31 by Laws, 1977, ch. 486, § 16; Laws, 1986, ch. 492, § 105; Laws, 1987, ch. 307, § 17; Laws, 1991, ch. 534, § 8.]

§ 37-19-33. [Former 1972 Code § 37-19-33 [Codes, 1942, §§ 6248-07, 6336-03.5; Laws, 1953, Ex Sess ch. 14, § 7; Laws, 1954, Ex Sess ch. 25, §§ 1, 2 (¶¶ 1, 2); Laws, 1960, ch. 296, §§ 1, 2; Laws, 1960, ch. 306, § 2; Laws, 1962, ch. 357, § 1] recodified as § 37-19-27 by Laws, 1977, ch. 486, § 14. Former 1972 Code § 37-19-13 [Codes, 1942, § 6248-02; Laws, 1953, Ex Sess ch. 14, § 2; Laws, 1954, ch. 269; Laws, 1955, Ex Sess ch. 55; Laws, 1958, ch. 306, § 2;

Laws, 1960, ch. 295, § 2; Laws, 1962, 2d Ex Sess ch. 20; Laws, 1964, ch. 386; Laws, 1965, Ex Sess ch. 21; Laws, 1966, ch. 400, § 1; Laws, 1968, ch. 392, § 2; Laws, 1970, ch. 367, § 2; 1071, ch. 363, § 2] amended and recodified as § 37-19-33 by Laws, 1977, ch. 486, § 17; Laws, 1986, ch. 492, § 106; Laws, 1991, ch. 534, § 9.]

§ 37-19-34. [Laws, 1994, ch. 615, § 1; repealed by Laws, 1997, ch. 612, § 30; Laws, 1999, ch. 511, § 10, eff from and after July 1, 1999.]

§ 37-19-35. [Former 1972 Code § 37-19-35 [Codes, 1942, § 6248-10; Laws, 1953, Ex Sess, ch. 14, § 10] recodified as § 37-19-29 by 1977, ch. 486, § 15. Former 1972 Code § 37-19-15 [Codes, 1942, § 6248-03; Laws, 1953, Ex Sess ch. 14, § 3; Laws, 1954, ch. 262; Laws, 1958, ch. 306, § 3; Laws, 1960, ch. 295, § 3; Laws, 1968, ch. 392, § 3; Laws, 1970, ch. 367; ch. 368, § 1; ch. 369; Laws, 1971, ch. 363, § 3; Laws, 1974, ch. 383, §§ 1, 2] amended and recodified as § 37-19-35 by Laws, 1977, ch. 486, § 18; Laws, 1978, ch. 481, § 1; Laws, 1979, 1st Ex Sess. ch. 7; Laws, 1980, ch. 307; Laws, 1980, ch. 372; Laws, 1986, ch. 492, § 107; Laws, 1986, ch. 500, § 17; Laws, 1992, ch. 524, § 13.]

§ 37-19-37. [Former 1972 Code § 37-19-37 [Codes, 1942, § 6248-08; Laws, 1953, Ex Sess, ch. 14, § 8] recodified as § 37-19-49 by 1977, ch. 486, § 25. Former 1972 Code § 37-19-17 [Codes, 1942, § 6248-04; Laws, 1953, Ex Sess ch. 14, § 4; Laws, 1968, ch. 392, § 4; Laws, 1973, ch. 395, § 1] amended and recodified as § 37-19-37 by Laws, 1977, ch. 486, § 19; Laws, 1986, ch. 492, § 108; Laws, 1986, ch. 507, § 7; Laws, 1994, ch. 545, § 5.]

§ 37-19-39. [Former 1972 Code § 37-19-39 [Codes, 1942, § 6248-09; Laws, 1953, Ex Sess ch. 14, § 9] recodified as § 37-19-51 by Laws, 1977, ch. 486, § 26. Former 1972 Code § 37-19-21 [Codes, 1942, § 6248-05; Laws, 1953, Ex Sess ch. 14, § 5; Laws, 1956, ch. 283, § 1; Laws, 1973, ch. 395, § 2] amended and recodified as § 37-19-39 by Laws, 1977, ch. 486, § 20; Laws, 1986, ch. 492, § 109; Laws, 1991, ch. 534, § 10; Laws, 1991, ch. 555 § 2; Laws, 1994, ch. 545, § 6.]

§ 37-19-41. [Former 1972 Code § 37-19-41 [Codes, 1942, § 6248-14; Laws, 1953, Ex Sess ch. 14, § 14] recodified as § 37-19-53 by Laws, 1977, ch. 486, § 27. Former 1972 Code § 37-19-23 [Codes, 1942, §§ 6534-05, 6534-12; Laws, 1953, Ex Sess ch. 27, §§ 5, 12] amended and recodified as § 37-19-41 by Laws, 1977, ch. 486, § 21; Laws, 1986, ch. 492, § 110; Laws, 1994, ch. 545, § 7.]

§ 37-19-43. [Former 1972 Code § 37-19-25 [Codes, 1942, §§ 6248-11, 6534-06; Laws, 1953, Ex Sess ch. 14, § 11; ch. 27, § 6] amended and recodified as § 37-19-43 by Laws, 1977, ch. 486, § 22; Laws, 1986, ch. 492, § 111.]

§ 37-19-45. [Former 1972 Code § 37-19-27 [Codes, 1942, § 6534-16; Laws, 1953, Ex Sess ch. 27, § 16] amended and recodified as 37-19-45 by Laws, 1977, ch. 486, § 23; Laws, 1985, ch. 391, § 1; Laws, 1986, ch. 492, § 112; Laws, 1987, ch. 307, § 18.]

§ 37-19-47. [Former 1972 Code § 37-19-29 [Codes, 1942, § 6248-12; Laws, 1953, Ex Sess ch. 14, § 12; Laws, 1955, Ex Sess ch. 46, § 1; Laws, 1960, ch. 292; Laws, 1976, ch. 413, §§ 1, 2] recodified as § 37-19-47 by 1977, ch. 486, § 24; Laws, 1985, ch. 391, § 2; Laws, 1987, ch. 307, § 19.]

§ 37-19-49. [Former 1972 Code § 37-19-37 [Codes, 1942, § 6248-08; Laws, 1953, Ex Sess, ch. 14, § 8] amended and recodified as § 37-19-49 by Laws, 1977, ch. 486, § 25; Laws, 1986, ch. 492, § 113, eff from and after July 1, 1987.]

§ 37-19-51. [Former 1972 Code § 37-19-39 [Codes, 1940, § 6248-09; Laws, 1953, Ex Sess ch. 14, § 9] amended and recodified as § 37-19-51 by Laws, 1977, ch. 486, § 26.]

§ 37-19-53. [Former 1972 Code § 37-19-41 [Codes, 1942, § 6248-14; Laws, 1953, Ex Sess ch. 14, § 14] recodified as § 37-19-53 by Laws, 1977, ch. 486, § 27.]

**Editor's Notes —** Former § 37-19-25 provided for the administration of minimum education program in line schools.

Former § 37-19-27 provided for counting of legally transferred students for teacher allotment and allotments for supportive services and the payment of maintenance funds to transferee school.

Former § 37-19-29 provided for the adjustments in allotments in certain cases.

Former § 37-19-31 provided for an allotment for administrative expenses.

Former § 37-19-33 provided for retirement and social security allotments.

Former § 37-19-34 provided for payment for health insurance for certain school district employees, federal funding, and withholding of district funding for failure to report data.

Former § 37-19-35 provided for the determination of the minimum local ad valorem tax effort required of districts to support program and full term payments to certain districts when term is reduced because of disaster.

Former § 37-19-37 related to determining the state funds needed annually to support the minimum education program.

Former § 37-19-39 related to determining the state funds available for the support of the minimum education program.

Former § 37-19-41 provided for an annual information report of state department of education.

Former § 37-19-43 related to preliminary estimates of education cost and amounts to be distributed.

Former § 37-19-45 related to the distribution of funds.

Former § 37-19-47 related to the payment of funds.

Former § 37-19-49 related to the number of teachers who may be employed in a county for each local

Former § 37-19-51 related to the state board of education's authority to make regulations necessary for the administration of the chapter.

Former § 37-19-53 related to penalties for violations of provisions of the chapter.

For provisions in effect after July 1, 2002, see Mississippi Adequate Education Program, §§ 37-151-1 et seq.

# CHAPTER 20.

# REMEDIAL EDUCATION

Sec.

37-20-1. Short title.
37-20-3. Purpose.
37-20-5. Formula for allocation of funds to school districts.
37-20-7. Requirements for funding of programs.
37-20-9. Powers and duties of department and board of education.

## § 37-20-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Remedial Education Act of 1988."

**HISTORY: Laws, 1988, ch. 583, § 1, eff from and after passage (approved May 23, 1988).**

### RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-20-3. Purpose.

The purpose of this chapter is to provide supplemental funds to each school district to be used for the sole purpose of providing direct remedial instruction to those students enrolled in the K-12 program who have need of special educational assistance in order that their level of educational attainment may be raised to that appropriate for their age. It is the intent of the Legislature that each school district utilize the instructional programs which, in the professional opinion of the local school officials, will be most effective and that the effectiveness of this program be evaluated in terms of the increase in student achievement in the basic skills of reading, mathematics and writing as measured by pretest and post-test of each student receiving special educational assistance from the funds provided by this chapter.

**HISTORY: Laws, 1988, ch. 583, § 2, eff from and after passage (approved May 23, 1988).**

## § 37-20-5. Formula for allocation of funds to school districts.

The funds which may be appropriated annually for this chapter shall be based on a formula developed by the State Department of Education and allocated to each school district on the basis of (a) the number of students whose scores on the Basic Skills Assessment Program (BSAP) tests are at the twenty-fifth percentile or below, and (b) the number of students identified as failing any section of the Functional Literacy Exam (FLE).

**HISTORY: Laws, 1988, ch. 583, § 3, eff from and after passage (approved May 23, 1988).**

## § 37-20-7. Requirements for funding of programs.

(1) To be eligible to receive funds under this chapter a school district shall describe in writing its remedial education program. The description shall include all special remedial and compensatory instruction to be provided by the district from all fund sources. The district description shall include a description of the program to be conducted at each separate school or location in the district and shall include the estimated number of students to participate in the program; the estimated number of teachers, volunteers and others to be utilized in the program; and the estimated budget for each such program.

(2) The programs provided by funds received under this chapter shall meet the following criteria:

(a) Each participating student must be determined by the school district, on the basis of the district's assessment tests, to need special educational assistance in order that the student's level of educational attainment in basic skills may be raised to that appropriate for children of the student's age.

(b) The program must be based on performance objectives related to educational achievement in the basic skills and provide supplementary services designed to meet the special educational needs of each participating student.

(c) The program must be evaluated in a manner consistent with the performance objectives and include a pretest and a post-test for each participating student. The evaluation may use local measures designed to measure the local instructional management plan.

(d) The state and local funds expended in the program must be accounted for separately from all other funds expended by the district.

(e) The program must establish a teacher support team in each building wherein the program is implemented to play a key role in determining the instructional services required by a child.

**HISTORY: Laws, 1988, ch. 583, § 4, eff from and after passage (approved May 23, 1988).**

## § 37-20-9. Powers and duties of department and board of education.

(1) The State Department of Education shall provide technical assistance to districts and carry out the responsibilities of reviewing, monitoring and evaluating the programs conducted under this chapter.

(2) The State Board of Education shall adopt rules which, in its opinion, are necessary to assure that the programs in each school district are carried out in a manner consistent with the purpose and intent of this chapter. The State Board of Education shall develop a procedure for approving or denying

local program applications within sixty (60) days of their receipt by the State Department of Education. The State Department of Education shall include in its annual report the number of students participating in programs under this chapter, the extent to which student achievement has increased, the programs which appear to be most successful, and an analysis of the expenditure of funds by district.

**HISTORY: Laws, 1988, ch. 583, § 5, eff from and after passage (approved May 23, 1988).**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.
State Department of Education generally, see § 37-3-1 et seq.

# CHAPTER 21.

# EARLY CHILDHOOD EDUCATION

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## EARLY CHILDHOOD EDUCATION PROGRAMS

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### § 37-21-1. Policy as to employment of persons in early childhood education programs.

It shall be the policy of this state that any person acting in the capacity of teacher, assistant teacher or teacher's aide shall possess certain educational qualifications in order to perform any of the functions, duties or powers of the same in early childhood education programs.

**HISTORY: Codes, 1942, § 6282-51; Laws, 1970, ch. 390, § 1, eff from and after July 1, 1970.**

**Cross References —** Certification of teachers and administrators, see § 37-3-2.

#### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).

### § 37-21-3. Educational qualifications of personnel; applicability to charter schools.

(1) No person shall act in the capacity of master teacher, teacher or assistant teacher in any federal or state-funded program of early childhood education or "Head Start," or perform any of the functions, duties or powers of the same, unless that person shall be qualified in the following manner:

(a) A master teacher or any other employee or consultant receiving a salary or fee equivalent to that of a master teacher shall meet the qualifications of a teacher in this section, including the requirement that a teacher may be required to hold a state teaching license by the State Department of Education, and have demonstrated effectiveness as an early childhood educator. Effectiveness as an early childhood educator may be demonstrated by a rating of highly effective on a state evaluation of teaching, if available, or with evidence that the teacher has a record of raising the achievement outcomes of prekindergarten students.

(b) A teacher shall possess a bachelor's degree in early childhood education, child development, or an equivalent field. A teacher may also possess a bachelor's degree in any field as well as have at least twelve (12) credit hours of coursework in early childhood education, child development, or an equivalent field approved by an institution granting a bachelor's degree in the early childhood education, child development, or an equivalent field; or have a bachelor's degree in any field as well as have completed a specialized early childhood training program deemed equivalent by the State Department of Education to twelve (12) hours of approved coursework.

(c) An assistant teacher shall possess an associate's degree in early childhood education, child development, or an equivalent field; or an associate's degree in any field and a Child Development Associate credential, a Montessori certification, or an equivalent certification. Public school assistant teachers in the voluntary prekindergarten program established by the Early Learning Collaborative Act of 2013 may be required by the State Department of Education to meet the definition of a highly qualified paraprofessional in addition to these requirements.

The State Department of Education shall adopt any necessary rules, policies or procedures to implement this section.

(2) Persons employed as a teacher, assistant teacher or in any other capacity in a prekindergarten or early childhood education program in a charter school authorized by the Mississippi Charter School Authorizer Board are exempt from the requirements of this section.

**HISTORY: Codes, 1942, § 6282-52; Laws, 1970, ch. 390, § 2; Laws, 2013, ch. 493, § 4; Laws, 2013, ch. 497, § 70, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Section 4 of ch. 493, Laws of 2013, effective July 1, 2013 (approved April 16, 2013), amended this section. Section 70 of ch. 497, Laws of 2013, effective July 1, 2013 (approved April 17, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

**Cross References —** Early Learning Collaborative Act of 2013, see § 37-21-51.

Mississippi Charter School Authorizer Board, see § 37-28-1 et seq.

## § 37-21-5. Enforcement of Sections 37-21-1 through 37-21-5.

The State Department of Education of the State of Mississippi is vested with the authority to enforce the provisions of Sections 37-21-1 through 37-21-5. The department shall have the authority to make investigations and to require such proof of qualification as may be necessary for the enforcement of Sections 37-21-1 through 37-21-5.

**HISTORY: Codes, 1942, § 6282-53; Laws, 1970, ch. 390, § 3; Laws, 2013, ch. 493, § 5, eff from and after July 1, 2013.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed the references to "this chapter" to be "Sections 37-21-1 through 37-21-5." The Joint Committee ratified the correction at its June 29, 2000, meeting.

**Cross References** — State Department of Education generally, see § 37-3-1 et seq.

### RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

## § 37-21-6. Mississippi Early Childhood Education Program.

The Mississippi Early Childhood Education Program shall be the kindergarten program implemented by local school districts under the minimum education program.

**HISTORY: Laws, 1996, ch. 452, § 2, eff from and after July 1, 1996.**

## § 37-21-7. Mississippi Elementary Schools Assistant Teacher Program.

(1) This section shall be referred to as the "Mississippi Elementary Schools Assistant Teacher Program," the purpose of which shall be to provide an early childhood education program that assists in the instruction of basic skills. The State Board of Education is authorized, empowered and directed to implement a statewide system of assistant teachers in kindergarten classes and in the first, second and third grades. The assistant teacher shall assist pupils in actual instruction under the strict supervision of a licensed teacher.

(2)(a) Except as otherwise authorized under subsection (7), each school district shall employ the total number of assistant teachers funded under subsection (6) of this section. The superintendent of each district shall assign the assistant teachers to the kindergarten, first-, second- and third-grade classes in the district in a manner that will promote the maximum efficiency, as determined by the superintendent, in the instruction of skills such as verbal and linguistic skills, logical and mathematical skills, and social skills.

(b) If a licensed teacher to whom an assistant teacher has been assigned is required to be absent from the classroom, the assistant teacher may assume responsibility for the classroom in lieu of a substitute teacher. However, no assistant teacher shall assume sole responsibility of the classroom for more than three (3) consecutive school days. Further, in no event shall any assistant teacher be assigned to serve as a substitute teacher for any teacher other than the licensed teacher to whom that assistant teacher has been assigned.

(3) Assistant teachers shall have, at a minimum, a high school diploma or a High School Equivalency Diploma equivalent, and shall show demonstratable proficiency in reading and writing skills. The State Department of Education shall develop a testing procedure for assistant teacher applicants to be used in all school districts in the state.

(4)(a) In order to receive funding, each school district shall:

(i) Submit a plan on the implementation of a reading improvement program to the State Department of Education; and

(ii) Develop a plan of educational accountability and assessment of performance, including pretests and posttests, for reading in Grades 1 through 6.

(b) Additionally, each school district shall:

(i) Provide annually a mandatory preservice orientation session, using an existing in-school service day, for administrators and teachers on the effective use of assistant teachers as part of a team in the classroom setting and on the role of assistant teachers, with emphasis on program goals;

(ii) Hold periodic workshops for administrators and teachers on the effective use and supervision of assistant teachers;

(iii) Provide training annually on specific instructional skills for assistant teachers;

(iv) Annually evaluate their program in accordance with their educational accountability and assessment of performance plan; and

(v) Designate the necessary personnel to supervise and report on their program.

(5) The State Department of Education shall:

(a) Develop and assist in the implementation of a statewide uniform training module, subject to the availability of funds specifically appropriated therefor by the Legislature, which shall be used in all school districts for training administrators, teachers and assistant teachers. The module shall provide for the consolidated training of each assistant teacher and teacher to whom the assistant teacher is assigned, working together as a team, and shall require further periodic training for administrators, teachers and assistant teachers regarding the role of assistant teachers;

(b) Annually evaluate the program on the district and state level. Subject to the availability of funds specifically appropriated therefor by the Legislature, the department shall develop: (i) uniform evaluation reports, to be performed by the principal or assistant principal, to collect data for the annual overall program evaluation conducted by the department; or (ii) a program evaluation model that, at a minimum, addresses process evaluation; and

(c) Promulgate rules, regulations and such other standards deemed necessary to effectuate the purposes of this section. Noncompliance with the provisions of this section and any rules, regulations or standards adopted by the department may result in a violation of compulsory accreditation standards as established by the State Board of Education and the Commission on School Accreditation.

(6) In addition to other funds allotted under the Minimum Education or Adequate Education Program, each school district shall be allotted sufficient funding for the purpose of employing assistant teachers. No assistant teacher shall be paid less than the amount he or she received in the prior school year. No school district shall receive any funds under this section for any school year during which the aggregate amount of the local contribution to the salaries of assistant teachers by the district shall have been reduced below such amount for the previous year.

For the 2019-2020 school year and school years thereafter, the minimum annual salary for assistant teachers shall be Fourteen Thousand Dollars ($14,000.00).

In addition, for each one percent (1%) that the Sine Die General Fund Revenue Estimate Growth exceeds five percent (5%) in fiscal year 2006, as certified by the Legislative Budget Office to the State Board of Education and subject to the specific appropriation therefor by the Legislature, the State Board of Education shall revise the salary scale in the appropriate year to provide an additional one percent (1%) across-the-board increase in the base salaries for assistant teachers. The State Board of Education shall revise the salaries prescribed above for assistant teachers to conform to any adjustments made in prior fiscal years due to revenue growth over and above five percent (5%). The assistant teachers shall not be restricted to working only in the grades for which the funds were allotted, but may be assigned to other classes as provided in subsection (2)(a) of this section.

(7)(a) As an alternative to employing assistant teachers, any school district may use the allotment provided under subsection (6) of this section for the purpose of employing licensed teachers for kindergarten, first-, second- and third-grade classes; however, no school district shall be authorized to use the allotment for assistant teachers for the purpose of employing licensed teachers unless the district has established that the employment of licensed teachers using such funds will reduce the teacher:student ratio in the kindergarten, first-, second- and third-grade classes. All state funds for assistant teachers shall be applied to reducing teacher:student ratio in Grades K-3.

It is the intent of the Legislature that no school district shall dismiss any assistant teacher for the purpose of using the assistant teacher allotment to employ licensed teachers. School districts may rely only upon normal attrition to reduce the number of assistant teachers employed in that district.

(b) Districts meeting the highest levels of accreditation standards, as defined by the State Board of Education, shall be exempted from the provisions of subsection (4) of this section.

**HISTORY: Laws, 1982, Ex Sess, ch. 17, § 26; Laws, 1986, ch. 500, § 19; Laws, 1988, ch. 487, § 7; Laws, 1989, ch. 429, § 1; Laws, 1992, ch. 519, § 8; Laws, 1992, ch. 524, § 14; Laws, 1993, ch. 618, § 3; Laws, 1994, ch. 581, § 13; Laws, 1995, ch. 617, § 2; Laws, 1996, ch. 452, § 1; Laws, 1997, ch. 508, § 2; Laws, 1997, ch. 612, § 20; Laws, 1999, ch. 494, § 3; Laws, 2000, ch. 330, § 1; Laws, 2000, ch. 533, § 10;**

**Laws, 2001, 1st Ex Sess, ch. 1, § 4; Laws, 2006, ch. 417, § 9; Laws, 2007, ch. 523, § 2; reenacted without change, Laws, 2009, ch. 345, § 26; reenacted and amended, Laws, 2009, ch. 445, § 9; Laws, 2014, ch. 398, § 3, eff from and after July 1, 2014; Laws, 2019, ch. 461, § 2, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of ch. 330, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 10 of ch. 533, Laws of 2000, effective from and after July 1, 2000, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the June 29, 2000 meeting of the Committee.

Section 9 of ch. 445, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), reenacted and amended this section. Section 26 of ch. 345, Laws of 2009, effective June 30, 2009 (approved March 16, 2009), reenacted this section without change. As set out above, this section reflects the language of Section 9 of ch. 445, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Editor's Notes —** Laws of 1997, ch. 612, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Laws of 2001, 1st Ex Sess, ch. 1, § 1, effective July 23, 2001, provides:

"SECTION 1. (1) Recognizing teaching as a profession as well as a vocation, it is the intent of the Legislature, by the passage of House Bill No. 1, 2001 First Extraordinary Session, to clarify the commitment of the House of Representatives and Senate of the State of Mississippi to increase the salaries of public school teachers during the 2001-2002 school year and in each of the next four (4) succeeding years. It is further the intent of the Legislature, by the passage of House Bill No. 1, 2001 First Extraordinary Session, to demonstrate its long-term commitment to improving education in the State of Mississippi.

"(2) The school board of each school district shall provide notice of the legislative intent expressed in subsection (1) of this section to each teacher and assistant teacher. The notice must be in writing and attached to or provided with at least one (1) salary payment to each teacher and assistant teacher before the expiration of sixty (60) days after the passage of House Bill No. 1, 2001 First Extraordinary Session."

Laws of 2008, ch. 416, § 1:

"SECTION 1. The State Department of Education shall conduct a study to determine the need for and the potential benefits of establishing a career ladder opportunity program for assistant teachers employed in the public schools. The study must include suggestions on possible incentives and enhanced salary opportunities for: assistant teachers who continue their education toward the completion of a bachelor's degree that ultimately leads to the acquisition of a Standard License to teach in Mississippi; and assistant teachers who already possess a bachelor's degree and take steps that lead to the acquisition of a Standard License to teach. Before December 1, 2008, the department shall submit a report on the findings of this study, including recommendations on the implementation of such a program, to the Chairmen of the House and Senate Education and Appropriations Committees."

**Amendment Notes —** The 2019 amendment rewrote the second paragraph of (6), which read: "For the 2007-2008 school year and school years thereafter, the minimum salary for assistant teachers shall be Twelve Thousand Five Hundred Dollars ($12,500.00)."

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Commission on School Accreditation, see § 37-17-1 et seq.

Exemption from the provisions of subsection (4) of this section for school districts meeting Level 4 or 5 accreditation standards, see § 37-17-12.

Limitation on increases of taxes levied for school district purposes; disposition of excess revenues, see § 37-57-107.

Mississippi Adequate Education Program, see § 37-151-1 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

A school district is not required to pay the salary of an assistant teacher while such individual is completing student teaching requirements in another district. Lee, Dec. 12, 2003, A.G. Op. 03-0577.

## § 37-21-9. Conduct of cost-benefit analysis on establishment of mandatory kindergarten and pre-kindergarten programs.

The State Department of Education shall:

(a) Conduct a total needs assessment of the state to determine what areas currently lack pre-kindergarten programs and services, and conduct a cost-benefit analysis of establishing pre-kindergarten programs on a statewide basis. Any expected costs, whether federal, state or local, associated with implementing this requirement shall be clearly outlined; and

(b) Conduct a cost-benefit analysis of implementing mandatory kindergarten on a statewide basis. Any expected costs, whether federal, state or local, associated with implementing this requirement shall be clearly outlined; and

(c) Study the feasibility of developing an optional graduation diploma, to be known as an occupational diploma, that would include course requirements to ensure that students have mastered skills and employment competencies. The study shall include proposed procedures for ensuring that students may select and move between courses of study leading to a standard high school diploma or an occupational diploma. The study shall include options for continued skills training through community colleges, which shall include agreements between school districts and community colleges to minimize the circumstances under which students must repeat successfully completed high school coursework in community college. Any expected costs, both federal and state, associated in implementing these requirements shall be clearly outlined; and

(d) Report annually to the Mississippi Legislature on the graduation and dropout rates based on Grades 7 through 12 and Grades 9 through 12 cohort groups, statewide and by district.

**HISTORY: Laws, 2003, ch. 454, § 1 eff from and after July 1, 2003.**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

## § 37-21-11. Kindergarten Readiness Assessment Program; legislative intent; timing of assessment.

(1) There is hereby established the "Kindergarten Readiness Assessment Program," authorizing the Mississippi Department of Education to establish a common statewide Kindergarten readiness assessment, the purpose of which is to provide teachers, administrators and parents baseline data on students at the beginning of their Kindergarten year. It is the intent of the Legislature, in establishing this program, to ensure that the Mississippi Department of Education shall:

(a) Select a readiness assessment that provides data on each Kindergarten student's performance to inform deployment of resources and instructional supports;

(b) Establish a policy to ensure each student's parent or guardian is informed of the student's performance on the assessment;

(c) Establish a policy to ensure that districts report results to the State Superintendent of Education; and

(d) Require this assessment be given to all students enrolled in a public Kindergarten in Mississippi.

(2) The Kindergarten readiness assessment may be given prior to the beginning of Kindergarten or during the first thirty (30) days of the Kindergarten year.

**HISTORY: Laws, 2014, ch. 536, § 2, eff from and after July 1, 2014.**

## EARLY LEARNING COLLABORATIVE ACT

Sec.

37-21-51. Definitions; legislative findings; Early Learning Collaborative Act of 2013; implementation of voluntary prekindergarten program; application for and use of program funds; criteria for awarding funds; funds to be appropriated on phased-in basis.
37-21-53. Creation of Council; purpose; membership.
37-21-55. Repealed.

## § 37-21-51. Definitions; legislative findings; Early Learning Collaborative Act of 2013; implementation of voluntary prekindergarten program; application for and use of program funds; criteria for awarding funds; funds to be appropriated on phased-in basis.

(1) As used in this section:

(a) "Preschool or prekindergarten children" means any children who have not entered kindergarten but will have obtained four (4) years of age on or before September 1 of a school year.

(b) An "early learning collaborative" is a district or countywide council that writes and submits an application to participate in the voluntary prekindergarten program. An early learning collaborative is comprised, at a minimum, of a public school district and/or a local Head Start affiliate if in existence, private or parochial schools, or one or more licensed child care centers. Agencies or other organizations that work with young children and their families may also participate in the collaborative to provide resources and coordination even if those agencies or organizations are not prekindergarten providers.

(c) A "prekindergarten provider" is a public, private or parochial school, licensed child care center or Head Start center that serves prekindergarten children and participates in the voluntary prekindergarten program.

(d) A "lead partner" is a public school district or other nonprofit entity with the instructional expertise and operational capacity to manage the early learning collaborative's prekindergarten program as described in the collaborative's approved application for funds. The lead partner serves as the fiscal agent for the collaborative and shall disburse awarded funds in accordance with the collaborative's approved application. The lead partner must facilitate a professional learning community for the teachers in the prekindergarten program and lead the collaborative. The lead partner ensures that the collaborative adopts and implements curriculum and assessments that align with the comprehensive early learning standards. The public school district shall be the lead partner if no other qualifying lead partner is selected.

(e) "Comprehensive early learning standards" are standards adopted by the State Board of Education that address the highest level of fundamental domains of early learning to include, but not be limited to, physical well-being and motor development, social/emotional development, approaches toward learning, language development and cognition and general knowledge. The comprehensive early learning standards shall also include standards for emergent literacy skills, including oral communication, knowledge of print and letters, phonological and phonemic awareness, and vocabulary and comprehension development.

(f) A "research-based curriculum" is an age-appropriate curriculum that is based on the findings of current research and has been found to be effective in improving student learning.

(2) To ensure that all children have access to quality early childhood education and development services, the Legislature finds and declares the following:

(a) Parents have the primary duty to educate their young preschool children;

(b) The State of Mississippi can assist and educate parents in their role as the primary caregivers and educators of young preschool children;

(c) There is a need to explore innovative approaches and strategies for aiding parents and families in the education and development of young preschool children; and

(d) There exists a patchwork of prekindergarten entities but no coordination of services and there needs to be a coordination of these services.

(3)(a) This subsection shall be known and may be cited as the "Early Learning Collaborative Act of 2013."

(b) Effective with the 2013-2014 school year, the Mississippi State Department of Education shall establish a voluntary prekindergarten program, which shall be a collaboration among the entities providing prekindergarten programs including Head Start, licensed child care facilities and licensed public, parochial and private school prekindergarten programs. This program shall be implemented no later than the 2014-2015 school year. Enrollment in the prekindergarten program shall be coordinated with the Head Start agencies in the local areas and shall not be permitted to cause a reduction in children served by the Head Start program. Under this program, eligible entities may submit an application for funds to (i) defray the cost of additional and/or more qualified teaching staff, appropriate educational materials and equipment and to improve the quality of educational experiences offered to four-year-old children in early care and education programs, and/or to (ii) extend developmentally appropriate education services at such programs currently serving four-year-old children to include practices of high quality instruction, and to (iii) administer, implement, monitor and evaluate the programs, and to (iv) defray the cost of professional development and age-appropriate child assessment.

(c) Subject to the availability of funds appropriated therefor, the State Department of Education shall administer the implementation, monitoring and evaluation of the voluntary prekindergarten program, including awards and the application process.

(i) The department shall establish a rigorous and transparent application process for the awarding of funds. Lead partners shall submit the applications on behalf of their early learning collaborative.

(ii) The department will establish monitoring policies and procedures that, at a minimum, will include at least one (1) site visit a year.

(iii) The department will provide technical assistance to collaboratives and their providers to improve the quality of prekindergarten programs.

(iv) The department will evaluate the effectiveness of each early childhood collaborative and each prekindergarten provider. If the State Department of Education adopts a statewide kindergarten screening that assesses the readiness of each student for kindergarten, the State Department of Education shall adopt a minimum rate of readiness that each prekindergarten provider must meet in order to remain eligible for prekindergarten program funds. Each parent who enrolls his or her child in the prekindergarten program must submit the child for the statewide kindergarten screening, regardless of whether the child is admitted to kindergarten in a public school.

(d) Prekindergarten program funds shall be awarded to early childhood collaboratives whose proposed programs meet the program criteria. The criteria shall include:

(i) Voluntary enrollment of children;

(ii) Collaboration among prekindergarten providers and other early childhood programs through the establishment of an early learning collaborative;

(iii) Qualifications of master teachers, teachers and assistants, which must conform to guidelines in Section 37-21-3;

(iv) At least fifteen (15) hours of annual professional development for program instructional staff, including professional development in early literacy;

(v) The use of state-adopted comprehensive early learning standards;

(vi) The use of a research-based curriculum that is designed to prepare students to be ready for kindergarten, with emphasis in early literacy, and is aligned with the comprehensive early learning standards;

(vii) The use of age-appropriate assessments aligned to the comprehensive early learning standards;

(viii) Teacher/child ratios of one (1) adult for every ten (10) children with a maximum of twenty (20) children per classroom and a minimum of five (5) children per classroom;

(ix) The provision of at least one (1) meal meeting state and federal nutrition guidelines for young children;

(x) Plans to screen and/or refer children for vision, hearing and other health issues;

(xi) Parent involvement opportunities;

(xii) Plans to serve children with disabilities as indicated under IDEA;

(xiii) The number of instructional hours to be provided, which shall equal no less than five hundred forty (540) instructional hours per school year for half-day programs and one thousand eighty (1,080) instructional hours per school year for full-day programs; and

(xiv) A budget detailing the use of funds for allowed expenses.

Participating child care centers shall: (a) meet state child care facility licensure requirements unless exempted under Section 43-20-5, Mississippi Code of 1972, and (b) select and utilize a nationally recognized assessment tool, approved by the State Department of Education, designed to document classroom quality, which must be in place not later than July 1, 2016, as certified by the State Department of Education.

Within the prekindergarten program, a prekindergarten provider must comply with the antidiscrimination requirements applicable to public schools. A prekindergarten provider may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the prekindergarten program, in violation of these antidiscrimination requirements. However, a prekindergarten provider may refuse to admit a child based on the provider's standard eligibility guidelines, provided that these guidelines do not violate the antidiscrimination requirements. Consistent with the Legislature's recognition of the primacy of a parent's role in the education of a preschool-age child and the related recognition of the state in assisting and educating parents in that role, if the State Department of Education adopts a statewide kindergarten screening that assesses the readiness of each student for kindergarten, the State Department of Education shall recognize each child's unique pattern of development when adopting a minimum rate of readiness that prekindergarten providers must meet in order to remain eligible for prekindergarten program funds. Each parent who enrolls his or her child in the prekindergarten program may submit the child for the statewide kindergarten screening, regardless of whether the child is admitted to kindergarten in a public school.

The State Department of Education may add program criteria not inconsistent with these requirements and shall develop policies and procedures to implement and enforce these criteria.

(e) The State Department of Education shall ensure that early learning collaboratives provide each parent enrolling a child in the voluntary prekindergarten program with a profile of every prekindergarten provider participating in the collaborative's geographic catchment area. The State Department of Education shall prescribe the information to be included in each profile as well as the format of the profiles. At a minimum, the profiles must include the prekindergarten provider's services, curriculum, instructor credentials and instructor-to-student ratio.

(f) A teacher, assistant teacher or other employee whose salary and fringe benefits are paid from state funds under this act shall only be classified as a state or local school district employee eligible for state health insurance benefits or membership in the Public Employees' Retirement System, if the person's employer is already an agency or instrumentality of the state, such as a school district, and the employee would be eligible for such benefits in the normal course of business.

(g) Funding shall be provided for this program beginning with the 2014 fiscal year subject to appropriation by the Legislature as provided in paragraph (h) of this subsection. The department shall make an annual report to the Legislature and the Governor regarding the effectiveness of the program. The PEER Committee shall review those reports and other program data and submit an independent evaluation of program operation and effectiveness to the Legislature and the Governor on or before October 1 of the calendar year before the beginning of the next phased-in period of funding.

(h)(i) The Legislature shall appropriate funds to implement the Early Education Collaborative Act of 2013 on a phased-in basis as follows:

1. The first phase shall be based on an annual state appropriation of not more than Eight Million Dollars ($8,000,000.00) and shall serve approximately three thousand five hundred (3,500) children through five (5) to eight (8) early learning collaboratives and their prekindergarten providers;

2. The second phase shall be based on an annual state appropriation of not more than Sixteen Million Dollars ($16,000,000.00) and shall serve approximately seven thousand (7,000) children through ten (10) to fifteen (15) early learning collaboratives and their prekindergarten providers;

3. The third phase shall be based on an annual state appropriation of not more than Thirty-three Million Nine Hundred Fifty Thousand

Dollars ($33,950,000.00) and shall serve approximately fifteen thousand (15,000) children through twenty (20) to twenty-five (25) early learning collaboratives and their prekindergarten providers.

(ii) Future phases shall be based on interest in the program and the effectiveness of the program as determined by the school readiness of participants. Each phase shall last for at least three (3) years but no more than five (5) years. The State Department of Education shall determine when to move to a new phase of the program, within the timeline provided herein.

(iii) Funding shall be provided to early learning collaboratives on the basis of Two Thousand One Hundred Fifty Dollars ($2,150.00) per student in a full-day program and One Thousand Seventy-five Dollars ($1,075.00) per student in a half-day program proposed in the collaborative's approved application. Once an early learning collaborative's plan is approved and funded, the collaborative and/or its prekindergarten providers shall receive funds on an ongoing basis unless the collaborative and/or its prekindergarten providers no longer meet the criteria to participate in the program.

(iv) Early learning collaboratives shall match state funds on a 1:1 basis. Local matching funds may include local tax dollars, federal dollars as allowed, parent tuition, philanthropic contributions, or in-kind donations of facilities, equipment and services required as part of the program such as food service or health screenings.

(v) The State Department of Education shall reserve no more than five percent (5%) of the appropriation in any year for administrative costs. Funds remaining after awards to early learning collaboratives and the department's administrative needs are met may be carried over in the following year. In the first year of implementation of the program, the department may delay the awarding of funds until the 2014-2015 school year should time not be sufficient to establish the program's operation prior to the 2013-2014 school year.

(vi) In the initial phase of implementation, the State Department of Education shall award state funds under the Early Learning Collaborative Act of 2013 based on a community's capacity, commitment and need. To determine capacity, commitment and need, the State Department of Education shall require evidence of existing strong local collaborations of early education stakeholders. Such evidence shall include, but not be limited to, collaborations resulting from any of the following:

1. Participation in Excel By 5;
2. Participation in supporting Partnerships to Assure Ready Kids (SPARK);
3. Participation in the Gilmore Early Learning Initiative (GELI); or
4. Participation in the Mississippi Building Blocks.

In determining community need, the department shall consider low academic achievement within the public school districts participating in an applicant early learning collaborative and the number and percentage of children without quality prekindergarten options.

(vii) All authority granted to the State Department of Education to establish program rules is subject to the public processes established in the provisions of the Mississippi Administrative Procedures Law, including, but not limited to, filing notice of the proposed rules, public hearings and any economic impact statement with the Office of the Secretary of State before presenting such information to the State Board of Education for final approval.

**HISTORY: Laws, 2000, ch. 510, § 1; Laws, 2007, ch. 440, § 1; reenacted and amended, Laws, 2009, ch. 345, § 27; Laws, 2013, ch. 493, § 1, eff from and after July 1, 2013.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (1). The reference to "Section 37-21-51" was changed to "this section." The Joint Committee ratified the correction at its August 1, 2013, meeting.

### RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-21-53. Creation of Council; purpose; membership.

(1) The State Early Childhood Advisory Council (SECAC), located in the Office of the Governor, is (a) to assist the State Department of Education with the implementation of the Early Learning Collaborative Act of 2013, (b) to ensure coordination among the various agencies and programs serving preschool children in order to support school district's efforts to achieve the goal of readiness to start school, (c) to facilitate communication, cooperation and maximum use of resources and to promote high standards for all programs serving preschool children and their families in Mississippi, (d) to serve as the designated council for early childhood education and care pursuant to federal Public Law 110-134, and (e) to carry out any responsibilities assigned to SECAC by the Governor and/or by applicable federal law.

(2) The membership of the State Early Childhood Advisory Council (SECAC) in accordance with Public Law 110-134, shall include the following members to be appointed by the Governor:

(a) A representative of the Mississippi Department of Human Services;

(b) A representative of the Mississippi Department of Education;

(c) A representative of local educational agencies;

(d) A representative of Mississippi Institutions of Higher Education;

(e) A representative of local providers of early childhood education and care services from each congressional district;

(f) A representative from Head Start agencies located in the state, including Indian Head Start programs and migrant and seasonal Head Start programs as available;

(g) The State Director of Head Start Collaboration;

(h) The Part C Coordinator and/or the Section 619 Coordinator of programs under the Individuals with Disabilities Education Act (20 USC 1419, 1431 et seq.);

(i) A representative of the Mississippi Department of Health;

(j) A representative of the Mississippi Department of Mental Health; and

(k) Representatives of other entities deemed relevant by the Governor.

**HISTORY: Laws, 2000, ch. 510, § 2; Laws, 2013, ch. 493, § 2, eff from and after July 1, 2013.**

## § 37-21-55. Repealed.

Repealed by Laws, 2013, ch. 493, § 7, effective from and after July 1, 2013.

§ 37-21-55. [Laws, 2000, ch. 510, § 3, eff from and after July 1, 2000.]

**Editor's Notes —** Former § 37-21-55 established the Interagency Advisory Committee and prescribed its purpose, membership and duties.

# CHAPTER 22.

# STATE FUNDS FOR SCHOOL DISTRICTS

Emergency fund Loss Assistance Program. .................................. 37-22-1
Mississippi School District Emergency Bridge Loan Act. .................. 37-22-25

## EMERGENCY FUND LOSS ASSISTANCE PROGRAM

Sec.
37-22-1 and 37-22-3. Repealed.
37-22-5. Emergency Fund Loss Assistance Program and Fund.
37-22-7. Allocation of appropriations.

### §§ 37-22-1 and 37-22-3. Repealed.

Repealed by Laws, 1997, ch. 612, § 30, eff from and after July 1, 2002.

§ 37-22-1. [Laws, 1989, ch. 510, § 1; Laws, 1991, ch. 497, § 1; Laws, 1993, ch. 504, § 1.]

§ 37-22-3. [Laws, 1989, ch. 510, § 2; Laws, 1991, ch. 497, § 2.]

**Editor's Notes** — Former § 37-22-1 established the Mississippi School District Uniform Millage Assistance Grant Program and Fund.

Former § 37-22-3 provided a second Level Funding Program.

For provisions in effect after July 1, 2002, see Mississippi Adequate Education Program, § 37-151-1 et seq.

**Cross References** — Use of monies from Education Enhancement Fund to assist in funding of Uniform Millage Assistance Grant Program, see § 37-61-33.

### § 37-22-5. Emergency Fund Loss Assistance Program and Fund.

There is herein created an Emergency Fund Loss Assistance Program to provide temporary grants to eligible school districts. The purpose of the program shall be to provide relief to school districts suffering losses of financial assistance under federal programs, such as the IMPACT Program, designed to serve the educational needs of children of government employees and Choctaw Indian children. Any school district which has sustained losses in direct payments from the federal government for the purpose of educating the children of federal government employees and Choctaw Indian children living on United States Government owned reservation land shall be entitled to an Emergency Fund Loss Assistance Grant, in the amount of the reduction of the grant funds received from the federal government from prior years. This grant shall be limited to losses resulting from reductions in the level of federal funding allocated to school districts from prior years and not from reductions resulting from a loss of students served by the school districts. Losses incurred prior to July 1, 1987, shall not be considered for purposes of determining the amount of the grant. There is hereby established an Emergency Fund Loss Assistance Fund in the State Treasury which shall be used to distribute the emergency grants to school districts. Expenditures from this fund shall not exceed One Million Dollars ($1,000,000.00) in any fiscal year. If the total of all grant entitlements from local school districts exceeds such sum, then the grants to the school districts shall be prorated accordingly. The State Treasurer shall transfer funds from this program in the same manner that funds are transferred from the Minimum Education Program Fund, as provided in Section 37-19-47.

**HISTORY: Laws, 1989, ch. 510, § 3, eff from and after July 1, 1990.**

**Editor's Notes —** Section 37-19-47 referred to in the last sentence was repealed by Laws of 1997, ch. 612, § 30, effective from and after July 1, 2002.

**Cross References —** Allocation of appropriations, see § 37-22-7.

### OPINIONS OF THE ATTORNEY GENERAL

Compromise of lawsuit for damages did not constitute other local revenue under 37-22-1(2)(g) [repealed] as contemplated by legislature for purposes of Mississippi School District Uniform Millage Assistance Grant Program. Caves, March 24, 1994, A.G. Op. #94-0150.

### RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

## § 37-22-7. Allocation of appropriations.

If state funds appropriated by the Legislature or otherwise made available by statute are insufficient to fully fund the Uniform Millage Assistance Grant Program, the Second Level Funding Program and the Emergency Fund Loss Assistance Program in any year, then any state funds made available for such programs shall be allocated by appropriation to each program in an aggregate amount which shall not exceed the total amount of state funds available.

**HISTORY: Laws, 1989, ch. 510, § 4, eff from and after July 1, 1990.**

# MISSISSIPPI SCHOOL DISTRICT EMERGENCY BRIDGE LOAN ACT

Sec.
37-22-25. Mississippi School District Emergency Bridge Loan program established; purpose; legislative intent; Mississippi School District Emergency Bridge Loan Fund created; repayment of loan; audit of receipts and expenditures of school districts in arrears; use of funds.

## § 37-22-25. Mississippi School District Emergency Bridge Loan program established; purpose; legislative intent; Mississippi School District Emergency Bridge Loan Fund created; repayment of loan; audit of receipts and expenditures of school districts in arrears; use of funds.

(1) This section shall be known and may be cited as the "Mississippi School District Emergency Bridge Loan Act."

(2)(a) There is established a bridge loan program to be administered by the State Department of Education for the purpose of assisting local school districts that suffer revenue losses as a result of an economic downturn that substantially impacts the state and local revenues available to school districts. Loan proceeds distributed to school districts shall be specifically for school district operations identified as essential by the department.

(b) It is the intent of the Legislature that the department endeavor to ensure that the costs of the administration of this section are as low as possible.

(3)(a) There is created a special fund in the State Treasury to be designated as the "Mississippi School District Emergency Bridge Loan Fund," referred to in this section as the "fund." The fund shall consist of money designated for deposit in the fund from any source including, but not limited to, appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. The fund shall be credited with all repayments of principal and interest derived from loans made from the fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the State General Fund. Monies in the fund may not be used or expended for any purpose except as authorized under this section.

(b) The department shall establish a loan program by which loans may be made available to school districts to assist those school districts. Any school district that demonstrates for the current fiscal year a projected revenue loss equal to or exceeding one-third (⅓) of its revenues in the preceding fiscal year may qualify for a loan. The interest rate on loans made under this section may vary from time to time and from loan to loan and shall be at or below market interest rates as determined by the department. The department shall act as quickly as is practicable and prudent in deciding on any loan request that it receives.

(c) The aggregate amount of any loans received under this section by a school district shall not exceed one hundred percent (100%) of the difference between the revenue received by the school district to fund essential operations in the preceding fiscal year and the estimated revenue from those sources in the current fiscal year plus sixteenth section principal funds that may be expended under law, cash reserves or fund balances at the fiscal year end, as determined by the department. The State Board of Education shall set the maximum amount of any loan made under this section at an amount that will ensure the equitable distribution of the amounts available for loans to the eligible school districts.

(d) A school district that receives a loan from the fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required by the department. Each recipient of a loan shall establish a dedicated source of revenue for repayment of the loan. Before any school district shall receive a loan, it must execute with the department a loan agreement evidencing the loan, a copy of which must be filed by the department with the State Tax Commission. The loan agreement may not be construed to prohibit any recipient from prepaying any part or all of the funds received. The repayment schedule in each loan agreement shall provide for: (i) monthly payments; (ii) semiannual payments; or (iii) other periodic payments. The loan agreement shall provide for the repayment of all funds received from the fund within not more than ten (10) years. At the request of the department, the State Tax Commission shall withhold semiannually from the amount to be remitted to a school district the sum necessary to pay all or a portion of the periodic payments for the loan.

(e) A school district that receives a loan from the state which is not eligible to pledge for repayment of the loan under paragraph (d) of this subsection shall repay the loan by making payments each month to the State Treasurer through the Department of Finance and Administration for and on behalf of the department according to Section 7-7-15, to be credited to the fund in lieu of pledging homestead exemption annual tax loss reimbursement.

Loan repayments shall be according to a repayment schedule contained in each loan agreement as required under paragraph (d) of this subsection.

(f) Evidences of indebtedness that are issued under this section may not be deemed indebtedness within the meaning specified in Section 37-59-5.

(g) The State Auditor, upon the request of the department, shall audit the receipts and expenditures of a school district if loan repayments appear to be in arrears. If the Auditor finds that the school district is in arrears in the repayments, the Auditor immediately shall notify the State Superintendent of Public Education, who may take any action necessary to enforce the terms of the loan agreement. The superintendent, in his discretion, may notify the State Tax Commission to withhold all future payments to the school district of homestead exemption annual tax loss reimbursements under Section 27-33-77 until such time that the school district is again current in its loan repayments, as certified by the department.

(h) All monies deposited in the fund may be used only for providing the loans authorized under this section. In addition, any amounts in the fund may be used to defray the reasonable costs of administering the fund. The department is authorized to use amounts available to it from the fund to contract for those facilities and staff needed to administer and provide routine management for the funds and loan program.

(4) In administering this section, the State Department of Education shall have the following powers and duties:

(a) To supervise the use of all funds made available under this section;

(b) To promulgate rules and regulations and to establish procedures in accordance with this section for the implementation of the loan program;

(c) To requisition monies in the fund and distribute those monies in accordance with this section;

(d) To maintain, in accordance with generally accepted government accounting standards, an accurate record of all monies in the fund made available to school districts under this section; and

(e) To file annually with the Legislature a report detailing how monies in the fund were spent during the preceding fiscal year in each school district.

(5) The State Bond Commission, at one time or from time to time, may declare the necessity for general funds for the purposes provided in this section, including the costs incident to the administration of the loan program. Upon approval by the State Bond Commission, the Department of Finance and Administration may transfer the necessary amount from the General Fund to the fund in ample time to discharge such loans and incidental costs.

(6) The Department of Finance and Administration, without further process of law, may certify the necessity for warrants and issue those warrants in such amounts as may be necessary to make loans under the program authorized by this section.

(7) After any state funds in the fund are no longer needed for the particular purpose for which they were appropriated, deposited or transferred into the fund, the Department of Finance and Administration shall transfer those state funds back to the particular fund or funds in the State Treasury from which they were appropriated or transferred into the fund, upon certification of the State Superintendent of Public Education that the state funds currently are not needed.

**HISTORY: Laws, 2010, ch. 437, § 1, eff from and after passage (approved Mar. 25, 2010).**

**Editor's Notes —** Section 27-3-4 provides that the term "State Tax Commission" shall mean the Department of Revenue.

# CHAPTER 23.

# EXCEPTIONAL CHILDREN

In General. .......... 37-23-1
State-Supported College and University Education Programs for Special Children. .......... 37-23-31
Payments for Instruction of Children Requiring Special Education in Certain Counties. [Repealed]. .......... 37-23-51
Financial Assistance to Exceptional Children Attending Private or Parochial Schools. .......... 37-23-61
Exceptional Children Under State Guardianship. .......... 37-23-77
Development Center for Retarded and Handicapped Children. .......... 37-23-91
Learning Resources System. .......... 37-23-121
Standards and Procedures for the Education of Exceptional Children. ... 37-23-133
Registration of Persons Having Impaired Hearing or Vision. [Repealed]. .. 37-23-151
County Contribution to Defray Costs of Learning Disability Program [Repealed]. .......... 37-23-159
Gifted Education. .......... 37-23-171
Blind Persons' Literacy Rights and Education. .......... 37-23-191

## IN GENERAL

Sec.
37-23-1. Purpose of §§ 37-23-1 through 37-23-159; design of programs and services; accountability system.
37-23-3. "Exceptional child" defined; pilot project in provision of language services for children with disabilities.
37-23-5. Administration of program of education for exceptional children.
37-23-7. Repealed.
37-23-9. Courses of study, methods of teaching, and qualifications of instructors.
37-23-11. Repealed.
37-23-13. Compliance by school boards with Americans with Disabilities Act; funding of reader machines or persons for visually impaired teachers.
37-23-15. Pilot programs for testing and educational remediation for dyslexia and related disorders.
37-23-16. Early literacy and numeracy screening assessment instruments; selection; use; funding.

### § 37-23-1. Purpose of §§ 37-23-1 through 37-23-159; design of programs and services; accountability system.

The purpose of Sections 37-23-1 through 37-23-159 is to mandate free appropriate public educational services and equipment for exceptional children in the age range three (3) through twenty (20) for whom the regular school programs are not adequate and to provide, on a permissive basis, a free appropriate public education, as a part of the state's early intervention system in accordance with regulations developed in collaboration with the agency designated as "lead agency" under Part C of the Individuals with Disabilities Education Act. The portion of the regulations developed in collaboration with the lead agency which are necessary to implement the programs under the authority of the State Board of Education shall be presented to the State Board of Education for adoption. This specifically includes, but shall not be limited to, provision for day schools for the deaf and blind of an age under six (6) years, where early training is in accordance with the most advanced and best approved scientific methods of instruction, always taking into consideration the best interests of the child and his improvement at a time during which he is most susceptible of improvement. Educational programs to exceptional children under the age of three (3) years shall be eligible for adequate education program funds.

All references in the laws of this state to the "Individuals with Disabilities Education Act" or to the "IDEA" shall be construed to include any subsequent amendments to that act.

The educational programs and services provided for exceptional children in Sections 37-23-1 through 37-23-15, 37-23-31 through 37-23-35, 37-23-61 through 37-23-75 and 37-23-77 shall be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success. The State Board of Education shall establish an accountability system for special education programs and students with disabilities. The system shall establish accountability standards for services provided to improve the educational skills designed to prepare children for life after their years in school. These standards shall be a part of the accreditation system and shall be implemented before July 1, 1996.

The State Department of Education shall establish goals for the performance of children with disabilities that will promote the purpose of IDEA and are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State Department of Education. Performance indicators used to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates shall be developed. Every two (2) years, the progress toward meeting the established performance goals shall be reported to the public.

**HISTORY: Codes, 1942, §§ 6631-01, 6631-02; Laws, 1952, ch. 283, §§ 1, 2; Laws, 1956, ch. 282; Laws, 1978, ch. 461, § 1; Laws, 1991, ch. 415, § 1; Laws, 1993, ch. 602, § 5; Laws, 1994, ch. 477, § 1; Laws, 1995, ch. 572, § 1; Laws, 1999, ch. 582, § 12; Laws, 2009, ch. 368, § 1, eff from and after July 1, 2009.**

**Editor's Notes —** Sections 37-23-7 and 37-23-51 through 37-23-55, referred to in this section, were repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

Sections 37-23-151 through 37-23-157, referred to in this section, were repealed by Laws of 1998, ch. 333, § 1, effective from and after July 1, 1998.

Section 37-23-159, referred to in this section, was repealed by Laws of 1983, ch. 531, § 2, effective from and after September 30, 1983.

Laws of 1999, ch. 582, § 17, provides:

"SECTION 17. It is the intent of the Legislature that none of the provisions of this act shall create mandates that impose financial or legal requirements upon local school districts which are greater or more restrictive upon local school districts as required by the Individuals with Disabilities Education Act of 1997 and any subsequent amendments or regulations thereunder, or any other relevant federal legislation. Furthermore, it is not the intent of the Legislature to impose any additional state unfunded mandates for the implementation of this act. Any provisions of this act which are inconsistent, create additional unfunded state mandates, or which are more restrictive upon school districts than federal requirements shall be expressly unenforceable and have no effect."

Laws of 2009, ch. 507, § 3, provides:

"SECTION 3. The House and Senate Education Chairmen shall appoint three (3) members of their respective committees to form a joint subcommittee to study the following:

"(a) The effectiveness of Oral/Auditory programs in teaching spoken language to the deaf so that they may compete and succeed with their hearing peers. The joint subcommittee may hear testimony from experts as well as compile data, study and report on the following:

"(i) Review the funding structure by which the state currently operates in funding deaf education;

"(ii) Conduct a study of the possibility of success in teaching spoken language before kindergarten if early intervention is properly funded;

"(iii) Determine all deaf education program requirements relating to facilities, nutrition services and transportation;

"(iv) Prepare a compilation and review of all deaf education services currently provided in Mississippi;

"(v) Study any other issues relating to deaf education programs determined to be relevant by the task force;

"(vi) Tour each deaf education program offered in the state; and

"(vii) Make appropriate findings and recommendations addressing the matters enumerated in this paragraph, including any legislative action that is considered necessary by the joint subcommittee.

"(b) In addition, the joint subcommittee may hear testimony from experts as well as compile data, study and report on the following matters: resources and programs that currently support students that have been diagnosed with Autism Spectrum Disorder, the feasibility of implementing Autism Spectrum Disorder classrooms in public school districts throughout the state, and the feasibility of implementing transition services to teenagers and adults that have been diagnosed with Autism Spectrum Disorder.

"(c) This section shall stand repealed on July 1, 2012."

Laws of 2011, ch. 512, § 1, effective July 1, 2011, provides:

"SECTION 1. (1) There is created the Joint Legislative and Paraprofessional Education and Mental Health Study Committee to study and make annual recommendations to the Mississippi Legislature and to assist in shaping public policy to improve student outcomes and educational opportunities for students with serious emotional, behavioral disorders in regular and special education in the State of Mississippi. The study group shall be composed of the following members:

"(a) One (1) person who is a member of the governing body of a school district, to be appointed by the State Superintendent of Public Education;

"(b) One (1) person who is a representative of the State Department of Education, to be appointed by the State Superintendent of Public Education (no designee);

"(c) One (1) person who is the Director of Special Education services in a school district, to be appointed

"(d) One (1) person who is a representative of the State Department of Mental Health, to be appointed by the executive director of the department;

"(e) One (1) regular education teacher to be appointed by the State Superintendent of Public Education;

"(f) One (1) special education teacher to be appointed by the State Superintendent of Public Education;

"(g) The Executive Director of Mississippi Families as Allies for Children's Mental

Health;

"(h) One (1) person each who is a representative of Parent and Training Institute, Mississippi Disability Rights, Southern Echo, Mississippi Center for Justice and National Alliance on Mental Illness (NAMI), to be appointed by the executive directors of each respective organization;

"(i) One (1) person who is a representative of the Department of Rehabilitation Services appointed by the

"(j) One (1) person who is a representative of the Department of Human Services appointed by the executive director of the department;

"(k) One (1) person who is a representative of a local school district Positive Behavioral Intervention Support (PBIS) model to be appointed by the State Superintendent of Public Education;

"( *l*) One (1) person who is an employee-representative of the Mississippi Association of Community Mental Health Centers to be appointed by the Governor;

"(m) One (1) person who is a nonemployee representative of the Mississippi Association of Community Mental Health Centers to be appointed by the Governor;

"(n) The Chairman of the House Public Health and Human Services Committee and the Chairman of the Senate Public Health and Welfare Committee, who will be cochairmen of the joint study committee; and

"(o) The Chairmen of the House and Senate Education Committees, who will be cochairmen of the joint study committee.

"(2) Members of the study group shall work together to insure that family members are representative of the regions of the state and the various types of relevant issues in both special education and regular education specific issues.

"(3) The study committee is tasked with the following responsibilities:

"(a) Collecting and analyzing data on out-of-school suspensions;

"(b) Collecting and analyzing data on alternative school placement;

"(c) Collecting and analyzing data on the use of corporal punishment;

"(d) Reviewing the use of Medicaid payments for mental health services in schools;

"(e) Establishing a clear defined process for requesting mental health services;

"(f) Reviewing mental health training provided for school personnel, beyond classroom management, interventions and preventions;

"(g) Promoting professional development training on disabilities and specific disorders; and

"(h) Evaluating why dropout rates for children and youth with mental health issues are higher than the average rate.

"(4) Appointments to the task force shall be made within thirty (30) days after the effective date of this act. The task force shall hold its first meeting not later than August 15, 2011, with the date, time and location of the meeting to be designated by the Executive Director of the Department of Mental Health.

"(5) Members of the task force shall serve without compensation for their services, but may be reimbursed for necessary expense in attending to the actual business of the task force from any available funds, as provided by law. Legislative members shall be reimbursed from the contingent expense fund of their respective house, but only with the specific approval of the Rules Committee of the respective house. The task force, by approval of a majority of its membership, may accept funds that may be donated or provided in the form of grants from public or private sources.

"(6) Any department, agency or court of this state, at the request of the chairman of the task force, shall provide staff and other support necessary for the task force to perform its duties.

"(7) The study committee shall report to the Governor and the Legislature by not later than January 1, 2013, at which time the study committee shall be dissolved."

**Cross References —** "Exceptional" child defined, see § 37-23-3.

Administration of program of education for exceptional children, see § 37-23-5.

Free appropriate education defined, see § 37-23-133(d).

**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## RESEARCH REFERENCES

**ALR.**

Collateral source rule: admissibility of evidence of availability to plaintiff of free public special education on issue of amount of damages recoverable from defendant. 41 A.L.R.5th 771.

Special education requirements of gifted students. 115 A.L.R.5th 183.

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.S. §§ 1400 et seq.). 161 A.L.R. Fed. 1.

Availability of damages in action to remedy violations of individuals with Disabilities Education Act (20 U.S.C.S §§ 1400 et seq.). 165 A.L.R. Fed. 463.

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards educational program or school rules as applied to learning disabled student. 166 A.L.R. Fed. 503.

**Am. Jur.**

68 Am. Jur. 2d, Schools §§ 479 et seq.

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

### § 37-23-3. "Exceptional child" defined; pilot project in provision of language services for children with disabilities.

(1) An exceptional child shall be defined as any child as herein defined, in the age range birth through twenty (20) years of age with an intellectual disability, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and, by reason thereof, needs special education and related services. Such children shall be determined by competent professional persons in such disciplines as medicine, psychology, special education, speech pathology and social work and shall be considered exceptional children for the purposes of Sections 37-23-1 through 37-23-159. Such professional persons shall be approved by the State Department of Education. The mandate for the provision of educational programs to exceptional children shall only apply to the children in the age range three (3) through twenty (20). Children who are potentially in need of special educational and related services must be considered for the services on an individual basis.

(2) During the fiscal year 1995 and fiscal year 1996, the State Department of Education shall conduct a pilot project in one or more school districts which shall test the method of providing language services described in this subsection. For purposes of this pilot project, a child with a disability as defined in the Individuals with Disabilities Education Act (IDEA) may not be denied language services because his measured cognitive functioning is equivalent to or lower than his measured functioning level in the language area. In order for

language services to be provided for a child, the measured functioning level of the child in the language area must indicate a delay relative to the child's chronological age. Individual determination of a child's needs must take into consideration the need for development in the language area, the need for support for basic adaptive skills in language development and the extent to which the child's lack of ability in the language area may have interfered with academic achievement or development milestones. In the area of language development, a child's need of alternative or augmentative communication modes and the need for language development must be considered fundamental in making their determination of need for services.

(3) The State Department of Education shall report to the Education Committees of the House of Representatives and the Senate by December 1, 1995, and December 1, 1996, on the results of the pilot project described in subsection (2) of this section. Such reports shall include, but not be limited to, the project; the number and ages of the children who applied for participation and who did participate in the pilot project; and evaluation of the benefits obtained by the children who participated in the pilot project; an estimate of the number of children who would likely utilize similar services if provided on a statewide basis; and an estimate of the cost of providing such services on a statewide basis.

(4) The State Board of Education shall promulgate regulations which ensure services are provided to children as such services are defined in this chapter.

**HISTORY: Codes, 1942, § 6631-02; Laws, 1952, ch. 283, § 2; Laws, 1956, ch. 282; Laws, 1974, ch. 394, § 1; Laws, 1978, ch. 461, § 2; Laws, 1991, ch. 415, § 2; Laws, 1993, ch. 602, § 6; Laws, 1994, ch. 490, § 1; Laws, 1999, ch. 582, § 13; Laws, 2010, ch. 476, § 11, eff from and after passage (approved Apr. 1, 2010).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in subsection (2) by changing "the measure functioning level of the child" to "the measured functioning level of the child" in the third sentence, and changing "language development an the extent" to "language development and the extent" in the next-to-last sentence. The Joint Committee ratified these corrections at its July 22, 2010, meeting.

**Editor's Notes —** Sections 37-23-7 and 37-23-51 through 37-23-55, referred to in this section, were repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

Sections 37-23-151 through 37-23-157, referred to in this section, were repealed by Laws of 1998, ch. 333, § 1, effective from and after July 1, 1998.

Section 37-23-159, referred to in this section, was repealed by Laws of 1983, ch. 531, § 2, effective from and after September 30, 1983.

Laws of 1999, ch. 582, § 17, provides:

"SECTION 17. It is the intent of the Legislature that none of the provisions of this act shall create mandates that impose financial or legal requirements upon local school districts which are greater or more restrictive upon local school districts as required by the Individuals with Disabilities Education Act of 1997 and any subsequent amendments or regulations thereunder, or any other relevant federal legislation. Furthermore, it is not the intent of the Legislature to impose any additional state unfunded mandates for the implementation of this act. Any provisions of this act which are inconsistent, create additional unfunded state mandates, or which are more restrictive upon school districts than federal requirements shall be expressly unenforceable and have no effect."

**Cross References** — State Department of Education generally, see § 37-3-1 et seq.

Private contracts for transporting exceptional children to public schools, see § 37-41-31.

**Federal Aspects**— Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 175 et seq., 479 et seq.

**Law Reviews.**

Aids in the Classroom. 58 Miss. L. J. 349, Fall 1988.

**Practice References.**

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-5. Administration of program of education for exceptional children.

Except as otherwise provided in Laws, 1999, Chapter 582, the State Department of Education is empowered to foster, inspect, approve and administer a program of education for exceptional children. The State Department of Education shall make the necessary rules and regulations in keeping with the provisions of Sections 37-23-1 through 37-23-9 and applicable federal laws and regulations which are not in conflict with Mississippi law for its proper administration and shall employ such personnel as may be necessary to administer such program.

The department shall require that the program of education for exceptional children be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success.

**HISTORY: Codes, 1942, § 6631-03; Laws, 1952, ch. 283, § 3; Laws, 1956, ch. 284; Laws, 1960, ch. 295, § 4; Laws, 1978, ch. 461, § 3; Laws, 1995, ch. 572, § 2; Laws, 1999, ch. 582, § 14, eff from and after July 1, 1999.**

**Joint Legislative Committee Note** — In the second sentence of the section, the reference to "provision of Sections 37-23-1 through 37-23-9" was changed to "provisions of Sections 37-23-1 through 37-23-9" in 2007 at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The correction was ratified by the Joint Committee, pursuant to Section 1-1-109, at the Committee's August 5, 2008, meeting.

**Editor's Notes** — Laws of 1999, ch. 582, § 17, provides:

"SECTION 17. It is the intent of the Legislature that none of the provisions of this act shall create mandates that impose financial or legal requirements upon local school districts which are greater or more restrictive upon local school districts as required by the Individuals with Disabilities Education Act of 1997 and any subsequent amendments or regulations thereunder, or any other relevant federal legislation. Furthermore, it is not the intent of the Legislature to impose any additional state unfunded mandates for the implementation of this act. Any provisions of this act which are inconsistent, create additional unfunded state mandates, or which are more restrictive upon school districts than federal requirements shall be expressly unenforceable and have no effect."

Section 37-23-7, referred to in this section, was repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

**Cross References —** Duty of state board of education to adopt course of study to be used in state public schools, see § 37-1-3.

Design of educational programs and services for exceptional children, see § 37-23-1.

"Exceptional" child defined, see § 37-23-3.

### RESEARCH REFERENCES

**Practice References.**

IDEA Reauthorized (Michie).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-7. Repealed.

Repealed by Laws, 1978, ch. 461, § 16, eff from and after July 1, 1978.

[Codes, 1942, § 6631-06; Laws, 1952, ch. 283, § 6; Laws, 1960, ch. 295, § 5; Laws, 1973, ch. 306, § 1; Laws, 1974, ch. 394, § 2]

**Editor's Notes —** Former § 37-23-7 provided for the establishment of special classes.

## § 37-23-9. Courses of study, methods of teaching, and qualifications of instructors.

Except as otherwise provided in Laws, 1999, Chapter 582, course of study, teacher-pupil ratio, adequacy of methods of instruction, in-service training qualifications of teachers and technicians, and necessary equipment for special education must comply with the requirements established by the state department of education. Boards of trustees of the districts wherein a special class or classes are established are to employ teachers as provided by law for the purpose of teaching the established special classes.

**HISTORY: Codes, 1942, § 6631-07; Laws, 1952, ch. 283, § 7; Laws, 1960, ch. 295, § 6, eff July 1, 1960; Laws, 1999, ch. 582, § 15, eff from and after July 1, 1999.**

**Editor's Notes —** Laws of 1999, ch. 582, § 17, provides:

"SECTION 17. It is the intent of the Legislature that none of the provisions of this act shall create mandates that impose financial or legal requirements upon local school districts which are greater or more restrictive upon local school districts as required by the Individuals with Disabilities Education Act of 1997 and any subsequent amendments or regulations thereunder, or any other relevant federal legislation. Furthermore, it is not the intent of the Legislature to impose any additional state unfunded mandates for the implementation of this act. Any provisions of this act which are inconsistent, create additional unfunded state mandates, or which are more restrictive upon school districts than federal requirements shall be expressly unenforceable and have no effect."

## RESEARCH REFERENCES

**ALR.**

Special education requirements of gifted students. 115 A.L.R.5th 183.

## § 37-23-11. Repealed.

Repealed by Laws of 2010, ch. 353, § 1, effective July 1, 2010.

§ 37-23-11. [Codes, 1930, § 6557; 1942, §§ 6245-07, 6245-07.5; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1946, ch. 297, § 7; Laws, 1966, ch. 418, § 1; Laws, 1970, ch. 364, § 1; Laws, 1982, Ex Sess, ch. 17, § 15; Laws, 1986, ch. 434, § 4; Laws, 2006, ch. 550, § 1, eff from and after July 1, 2006.]

**Editor's Notes —** Former § 37-23-11 provided for a due process hearing regarding an exceptional child's identification, evaluation or educational placement.

## § 37-23-13. Compliance by school boards with Americans with Disabilities Act; funding of reader machines or persons for visually impaired teachers.

(1) The school board of any school district is hereby authorized to comply with the provisions of the Federal Americans with Disabilities Act of 1990 (42 U.S.C.S. Sections 12101-12213 (West Supp. 1991)) by making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the school board can demonstrate that the accommodation would impose an undue hardship on the operation of the school. The school board of any such school district determining that such accommodation is required and reasonable may, by resolution spread upon its minutes, apply to the State Department of Education for funds to defray the cost of providing qualified reader machines or persons, as determined by the school board to be in the best interest of the individual teacher, for visually-impaired classroom teachers in compliance with said federal law.

(2) The State Department of Education, within the availability of funds appropriated for such purpose, may expend funds for the purpose of defraying the expenses of school districts in providing qualified reader machines or persons, as determined by the school board to be in the best interest of the individual teacher, for visually-impaired classroom teachers under the said Americans with Disabilities Act of 1990, with the approval of the State Board of Education. The department shall, by regulation, prescribe a method and necessary forms for the purpose of school districts' applications for funds as authorized herein.

**HISTORY: Laws, 1993, ch. 501, § 1, eff from and after July 1, 1993.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

## RESEARCH REFERENCES

**ALR.**
What constitutes substantial limitation on major life activity of working for purposes of Americans with Disabilities Act (42 USCS §§ 12101-12213). 141 A.L.R. Fed. 603.

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

## § 37-23-15. Pilot programs for testing and educational remediation for dyslexia and related disorders.

(1) The State Department of Education, in accordance with Sections 37-23-1 through 37-23-75, and any additional authority granted in this chapter, shall:

(a) Adopt pilot programs under which certain students enrolled or enrolling in public schools in this state shall be tested for dyslexia and related disorders as may be necessary. The pilot programs shall provide that upon the request of a parent, student, school nurse, classroom teacher or other school personnel who has reason to believe that a student has a need to be tested for dyslexia, such student shall be reviewed for appropriate services. However, a student shall not be tested for dyslexia whose parent or guardian objects thereto on grounds that such testing conflicts with his conscientiously held religious beliefs.

(b) In accordance with the pilot programs adopted by the State Department of Education, such school boards shall provide remediation in an appropriate multi-sensory, systematic language-based regular education program or programs, as determined by the school district, such as the Texas Scottish Rite Hospital Dyslexia Training Program, pertinent to the child's physical and educational disorders or the sensory area in need of remediation for those students who do not qualify for special education services.

(c) The State Department of Education, by not later than January 1, 1997, shall make recommendations to the school boards designated for the pilot programs for the delivery of services to students who are identified as dyslexic.

(d) For the purposes of this section:

(i) "Dyslexia" means a language processing disorder which may be manifested by difficulty processing expressive or receptive, oral or written language despite adequate intelligence, educational exposure and cultural opportunity. Specific manifestations may occur in one or more areas, including difficulty with the alphabet, reading comprehension, writing and spelling.

(ii) "Related disorders" shall include disorders similar to or related to dyslexia such as developmental auditory imperception, dysphasia, specific developmental dyslexia, dyspraxia, developmental dysgraphia and developmental spelling disability.

(e) Local school districts designated for the pilot programs may utilize any source of funds other than minimum program funds to provide any services under this section.

(f) Nothing in this section shall be construed to require any school district to implement this section unless the local school board, by resolution spread on its minutes, voluntarily agrees to comply with this section and any regulations promulgated under this section. Any local school board may withdraw from participation in the program authorized under this section by providing written notice of its determination to withdraw to the State Department of Education no later than June 1 of the preceding fiscal year.

(2) State funding for the pilot programs for testing students for dyslexia shall be subject to the availability of funds specifically appropriated therefor by the Legislature.

(3) The State Department of Education shall prepare a report for the 1999 Regular Session of the Legislature to be submitted to the Chairmen of the Education Committees of the Senate and House of Representatives not later than November 1, 1998, with recommendations as to the effectiveness of the pilot programs for students with dyslexia and whether or not the pilot programs should be expanded or discontinued.

**HISTORY: Laws, 1994, ch. 429, § 1; Laws, 1996, ch. 541, § 1; Laws, 1997, ch. 407, § 1; Laws, 1999, ch. 429, § 1; Laws, 2001, ch. 546, § 1; Laws, 2007, ch. 402, § 1, eff from and after July 1, 2007.**

**Editor's Notes —** Sections 37-23-7 and 37-23-51 through 37-23-55, referred to in this section, were repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

## § 37-23-16. Early literacy and numeracy screening assessment instruments; selection; use; funding.

(1)(a) The State Department of Education shall select early literacy and numeracy screening assessment instrument or instruments to be used throughout the state in the screening of students in Kindergarten through Grade 3.

(b) All school districts shall use the literacy and numeracy screening instrument or instruments selected by the department; however, no literacy or numeracy screening instrument or instruments shall be used by school districts for the purpose of determining whether or not a student will be promoted to the next grade level. For the purposes of this section, "literacy" means ability to read and write and "numeracy" means fluency in understanding numbers and mathematical operations.

(2) In addition to those funds that are appropriated by the Legislature, the State Department of Education may receive and expend funds made available to the department from any source, including any federal or other governmental agency, private business, industry, foundation or other organization, to screen students for literacy and numeracy difficulties.

(3) The State Department of Education shall establish a reporting system for school districts in order to monitor the effectiveness of the literacy or

numeracy screening assessment instruments. The department shall require school districts to annually submit data requested by the department which may be utilized to determine whether or not the assessment instruments are accurately identifying students in need.

(4) The requirements of this section shall be effective beginning with the 2008-2009 school year and compliance with the mandates of this section shall be subject to appropriation by the Legislature.

**HISTORY: Laws, 2007, ch. 402, § 2; Laws, 2011, ch. 442, § 17, eff from and after July 1, 2011.**

## STATE-SUPPORTED COLLEGE AND UNIVERSITY EDUCATION PROGRAMS FOR SPECIAL CHILDREN

| Sec. | |
|---|---|
| 37-23-31. | Establishment of education program for deaf, aphasic and emotionally disturbed children; rights of parents or guardians regarding placement or education programs. |
| 37-23-33. | Powers and duties of board and department of education. |
| 37-23-35. | Payment for education of students attending program. |

### § 37-23-31. Establishment of education program for deaf, aphasic and emotionally disturbed children; rights of parents or guardians regarding placement or education programs.

(1) When five (5) or more children under twenty-one (21) years of age who because of deafness, aphasia, emotional disturbance and/or other low-incidence conditions, are unable to have their educational needs met in a regular public school program, and a special education program in their particular areas of exceptionality is not available in their respective local public school districts, a state-supported university or college shall be authorized and empowered, in its discretion, to provide a program of education, instruction and training to such children, provided that such program shall operate under rules, regulations, policies and standards adopted by the State Department of Education as provided for in Section 37-23-33. The opinion of a parent or guardian in regard to the provision of an appropriate special education program in or by their respective local public school district shall be considered before a placement decision is finalized. Parents shall have any and all rights as provided in the Individuals with Disabilities Education Act, including, but not limited to, the right to equal participation in their child's Individualized Education Program (IEP), the right to require review of their child's IEP, and the right to appeal an IEP Committee decision immediately. The parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least twenty-four (24) hours prior to the meeting.

(2) Any state-supported university or college conducting a full-time medical teaching program acceptable to the State Board of Education may, at its discretion, enter into such contracts or agreements with any private school or nonprofit corporation-supported institution, the Mississippi School for the Deaf, or any state-supported institution, providing the special education contemplated by this section for such services, provided the private school or institution offering such services shall have conducted a program of such services at standards acceptable to the State Department of Education for a period of at least one (1) year prior to the date at which the university or college proposes to enter into an agreement or contract for special educational services as described above.

**HISTORY: Codes, 1942, § 6631-21; Laws, 1966, ch. 430, § 1; Laws, 1978, ch. 461, § 5; Laws, 1995, ch. 574, § 1, eff July 1, 1995; Laws, 2012, ch. 548, § 2, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (1). The reference to "Section 37-23-93" was changed to read "Section 37-23-33." The Joint Committee ratified the change at its August 5, 2008, meeting.

**Cross References —** Exceptional child defined, see § 37-23-3.

IEP defined, see § 37-23-133(e).

Implementation and maintenance of post-secondary educational programs of services for hearing-impaired students, see § 37-33-81.

Mississippi School for the Deaf, see § 43-5-1.

**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**Practice References.**
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-33. Powers and duties of board and department of education.

Such program of education, instruction and training as is provided for in Section 37-23-31 shall be furnished in such manner as shall be provided by rules and regulations adopted by the State Board of Education, which for such purposes shall have the full power to adopt such rules, regulations, policies and standards as it may deem necessary to carry out the purpose of Sections 37-23-31 through 37-23-35, including the establishment of qualifications of any teachers employed under the provisions thereof. It is expressly provided, however, that no program of education, instruction and training shall be furnished except in a university or college supported by the State of Mississippi and only in cases where such university or college shall consent thereto and shall provide any classroom space, furniture and facilities which may be deemed necessary in carrying out the provisions of those sections.

The State Department of Education shall require that the program of education, instruction and training be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success.

**HISTORY: Codes, 1942, § 6631-22; Laws, 1966, ch. 430, § 2; Laws, 1995, ch. 572, § 3, eff from and after July 1, 1995.**

**Cross References** — Duty of state board of education to adopt course of study to be used in state public schools, see § 37-1-3.

State Department of Education generally, see § 37-3-1 et seq.

Implementation and maintenance of post-secondary educational programs of services for hearing-impaired students, see § 37-33-81.

## § 37-23-35. Payment for education of students attending program.

When any children who are residents of the State of Mississippi and qualify under the provisions of Section 37-23-31, shall be provided a program of education, instruction and training within a school under the provisions of said section, the State Department of Education shall allocate one (1) teacher unit for each approved class. The allocation of funds for each teacher unit shall be based on the teacher's certification and shall be in accordance with Sections 37-19-1 through 37-19-41 of the code. The university or college shall be eligible for state and federal funds for such programs on the same basis as local school districts. The university or college shall be responsible for providing for the additional costs of the program.

**HISTORY: Codes, 1942, § 6631-23; Laws, 1966, ch. 430, § 3; Laws, 1978, ch. 461, § 6; Laws, 1988, ch. 423, eff from and after July 1, 1988.**

**Editor's Notes** — Sections 37-19-1 through 37-19-5, 37-19-9 through 37-19-11, 37-19-15 through 37-19-19, 37-19-21, 37-19-23, and 37-19-25 through 37-19-41, referred to in this section, were repealed by Laws of 1997, ch. 612, § 30, effective from and after July 1, 2002.

Section 37-19-13, referred to in this section, was repealed by Laws of 1997, ch. 545, § 30, effective from and after passage (approved April 10, 1997), and by Laws of 1997, Ch. 612, § 30, effective from and after July 1, 2002.

Sections 37-19-20 and 37-19-22, referred to in this section, were repealed by Laws of 2002, ch. 551, § 6, effective from and after July 1, 2002.

Section 37-19-24, referred to in this section, was repealed by Laws of 1999, ch. 494, § 4, effective from and after July 1, 2002.

**Cross References** — Implementation and maintenance of post-secondary educational programs of services for hearing-impaired students, see § 37-33-81.

# PAYMENTS FOR INSTRUCTION OF CHILDREN REQUIRING SPECIAL EDUCATION IN CERTAIN COUNTIES
# [REPEALED]

Sec.
37-23-51 and 37-23-55. Repealed.

## §§ 37-23-51 and 37-23-55. Repealed.

Repealed by Laws, 1978, ch. 461, § 16, eff from and after July 1, 1978.
§ 37-55-51. [Codes, 1942, § 6631-25; Laws, 1968, ch. 420, § 1]
§ 37-23-55. [Laws 1972, ch. 390, § 1]

**Editor's Notes —** Former § 37-23-51 authorized the board of education of certain counties to pay for instruction of children requiring special education.

Former § 37-23-55 authorized the board of trustees of any municipal separate school district of a municipality having a population of more than 150,000 to pay private schools for furnishing special education services to qualified residents of the district.

# FINANCIAL ASSISTANCE TO EXCEPTIONAL CHILDREN ATTENDING PRIVATE OR PAROCHIAL SCHOOLS

Sec.
37-23-61. "Child" defined.
37-23-63. Eligibility to receive state and federal financial assistance.
37-23-65. General powers and duties of department of education.
37-23-67. Receipt and administration of funds.
37-23-69. Determination and payment of financial assistance; application of funds by receiving institutions.
37-23-71. Commitments for payment of financial assistance.
37-23-73. Hearings on denials of financial assistance; appeals.
37-23-75. Offenses and penalties.

## § 37-23-61. "Child" defined.

As used in Sections 37-23-61 through 37-23-75, the word "child" shall mean any child who cannot pursue all regular classwork due to reasons of defective hearing, vision, speech, intellectual disability, or other mental or physical conditions as determined by competent medical authorities and psychologists. Those medical authorities and psychologists shall be approved by the State Department of Education.

**HISTORY: Codes, 1942, § 6631-54; Laws, 1971, ch. 304, § 4; Laws, 1978, ch. 461, § 7; Laws, 2010, ch. 476, § 12, eff from and after passage (approved Apr. 1, 2010).**

**Cross References —** Exceptional child defined, see § 37-23-3.

Education of child within meaning of this section who is under legal guardianship of state department of public welfare, see § 37-23-77.

## RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## JUDICIAL DECISIONS

**1. In general.**

The statutory scheme providing monetary tuition to students attending private, non-parochial schools, as applied, fell outside the parameters of constitutionally permissible state action where the amount of state aid was significant and where the aid was made available to all private schools, unlimited by a nondiscrimination certification procedure. Bishop v. Starkville Academy, 442 F. Supp. 1176, 1977 U.S. Dist. LEXIS 12148 (N.D. Miss. 1977).

## § 37-23-63. Eligibility to receive state and federal financial assistance.

Every child who is a resident citizen of the State of Mississippi under twenty-one (21) years of age, who cannot pursue all regular class work due to reasons of defective hearing, vision, speech, intellectual disability or other mental or physical conditions as determined by competent medical authorities and psychologists, who has not finished or graduated from high school, and who is in attendance in a private school, parochial school or speech, hearing and/or language clinic that is accredited by a state or regional accrediting agency or approved/licensed by the State Department of Education, shall be eligible and entitled to receive state financial assistance in the amount set forth in Section 37-23-69. Exceptional children as defined in Section 37-23-3(1) and who are certified by the designated state authority as requiring inpatient care in a private intermediate care facility for the mentally retarded or psychiatric residential treatment facility, with Medicaid reimbursement, shall be eligible and entitled to receive state and federal financial assistance under the provisions of Section 37-23-69, as allowable and available, if an approved private school is operated as an integral part of the facility that provides twenty-four (24) hours a day monitoring, treatment and education.

**HISTORY: Codes, 1942, § 6631-51; Laws, 1971, ch. 304, § 1; Laws, 1975, ch. 487, § 1; Laws, 1978, ch. 461, § 8; Laws, 1983, ch. 529, § 1; Laws, 1991, ch. 546, § 1; Laws, 1993, ch. 401, § 1; Laws, 1993, ch. 602, § 7; Laws, 2004, ch. 573, § 1; Laws, 2010, ch. 476, § 13; Laws, 2011, ch. 513, § 1, eff from and after July 1, 2011.**

**Cross References** — Exceptional child defined, see § 37-23-3.

Child defined, see § 37-23-61.

Hearings on denials of financial assistance, appeals, see § 37-23-73.

Education of child within meaning of this section who is under legal guardianship of state department of human services, see § 37-23-77.

### RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 449 et seq., 468-470.

**CJS.**
78A C.J.S., Schools and School Districts §§ 1111-1116.

## § 37-23-65. General powers and duties of department of education.

The State Department of Education is authorized and directed to promulgate rules and regulations for the payment of such financial assistance and the administration of Sections 37-23-61 through 37-23-75 generally.

The State Department of Education shall have the authority to promulgate and enforce reasonable rules and regulations establishing standards for administration of the program contemplated by Sections 37-23-61 through 37-23-75, consistent with the maintenance of high quality programs for the benefit of the exceptional children served.

The State Department of Education shall require that the programs for which children are eligible for financial assistance under Sections 37-23-61 through 37-23-75 be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success.

**HISTORY: Codes, 1942, §§ 6631-52, 6631-54; Laws, 1971, ch. 304, §§ 2, 4; Laws, 1995, ch. 572, § 4, eff from and after July 1, 1995.**

**Cross References** — Duty of state board of education to adopt course of study to be used in state public schools, see § 37-1-3.
State Department of Education of generally, see § 37-3-1 et seq.
Exceptional child defined, see § 37-23-3.
Child defined, see § 37-23-61.

## § 37-23-67. Receipt and administration of funds.

The State Department of Education shall have the power to receive and administer all funds for or hereafter appropriated to, provided for, or otherwise accruing to, the State Department of Education for the purpose of providing financial assistance to students attending private schools, parochial schools or speech, hearing and/or language clinics that are accredited by a state or regional accrediting agency or approved/licensed by the State Department of Education, for the purpose of defraying the cost of the administration of Sections 37-23-61 through 37-23-75, and for any and all purposes necessary or proper for the administration of the provisions of said sections.

**HISTORY: Codes, 1942, § 6631-52; Laws, 1971, ch. 304, § 2; Laws, 1983, ch. 529, § 2; Laws, 1993, ch. 602, § 8, eff from and after July 1, 1993.**

## § 37-23-69. Determination and payment of financial assistance; application of funds by receiving institutions.

The State Department of Education may determine and pay the amount of the financial assistance to be made available to each applicant, and see that all applicants and the programs for them meet the requirements of the program for exceptional children. No financial assistance shall exceed the obligation actually incurred by the applicant for educational costs, which shall include special education and related services as defined by the Mississippi Department of Education Policies and Procedures Regarding Children with Disabilities under the federal Individuals with Disabilities Education Act (IDEA). Within the amount of available state funds appropriated for that purpose, each such applicant may receive assistance according to the following allowances:

(a) If the applicant chooses to attend a private school, a parochial school or a speech, hearing and/or language clinic having an appropriate program for the applicant, and if the school or clinic meets federal and state regulations, then the educational costs reimbursement will be one hundred percent (100%) of the first Six Hundred Dollars ($600.00) in educational costs charged by the school or clinic; or, if the applicant is under six (6) years of age, and no program appropriate for the child exists in the public schools of his domicile, then the reimbursement shall be one hundred percent (100%) of the first Six Hundred Dollars ($600.00) in educational costs charged by the school or clinic, and fifty percent (50%) of the next Eight Hundred Dollars ($800.00) in educational costs charged by the school or clinic;

(b) A public school district shall be reimbursed for the educational costs of an applicant up to an annual maximum based on a multiple of the base student cost as determined under the Mississippi Adequate Education Program (MAEP) or other cost factor as determined by the State Board of Education if the following conditions are met: (i) an applicant in the age range six (6) through twenty (20) requests the public school district where he resides to provide an education for him and the nature of the applicant's educational problem is such that, according to best educational practices, it cannot be met in the public school district where the child resides; (ii) the public school district decides to provide the applicant a free appropriate education by placing him in a private school, a parochial school or a speech, hearing and/or language clinic having an appropriate program for the applicant; (iii) the program meets federal and state regulations; and (iv) the applicant is approved for financial assistance by a State Level Review Board established by the State Board of Education. The Review Board will act on financial assistance requests within five (5) working days of receipt. Nothing in this paragraph shall prevent two (2) or more public school districts from forming a cooperative to meet the needs of low incidence exceptional children, nor shall the public school be relieved of its responsibility to provide an education for all children. If state monies are not sufficient to fund all applicants, there will be a ratable reduction for all recipients receiving state funds under this section. School districts may pay additional educational costs from available federal, state and local funds.

If an exceptional child, as defined in Section 37-23-3, is placed in a therapeutic or other group home licensed or approved by the state that has no educational program associated with it, the local school district in which the home is located shall offer an appropriate educational program to that child.

At any time that the Individualized Education Program (IEP) Committee in the district where the home is located determines that an exceptional child, as defined in Section 37-23-3, residing in that home can no longer be provided a free appropriate public education in that school district, and the State Department of Education agrees with that decision, then the State Department of Education shall recommend to the Department of Human Services placement of the child by the Department of Human Services, which shall take appropriate action. The placement of the exceptional child in the facility shall be at no cost to the local school district. Funds available under Sections 37-23-61 through 37-23-77, as well as any available federal funds, may be used to provide the educational costs of the placement. If the exceptional child is under the guardianship of the Department of Human Services or another state agency, the State Department of Education shall pay only for the educational costs of that placement, and the other agency shall be responsible for the room, board and any other costs. The special education and related services provided to the child shall be in compliance with State Department of Education and any related federal regulations. The State Board of Education may promulgate regulations that are necessary to implement this section; and

(c) If an appropriate local or regional system of care, including a free appropriate public education, is available for exceptional children who are currently being served in out-of-district or Department of Human Services placements under Section 37-23-69(b) or 37-23-77, then the state funds from the State Department of Education that would have been used for those placements may be paid into a pool of funds with funds from other state agencies to be used for the implementation of the individualized plans of care for those children. If there are sufficient funds to serve additional exceptional children because of cost savings as a result of serving these students at home and/or matching the pooled funds with federal dollars, the funds may be used to implement individualized plans of care for those additional exceptional children. Each local or regional provider of services included in the individualized plans of care shall comply with all appropriate state and federal regulations. The State Board of Education may promulgate regulations that are necessary to implement this section.

The State Department of Education may also provide for the payment of that financial assistance in installments and for proration of that financial assistance in the case of children attending a school or clinic for less than a full school session and, if available funds are insufficient, may allocate the available funds among the qualified applicants and local school districts by reducing the maximum assistance provided for in this section.

Any monies provided an applicant under Sections 37-23-61 through 37-23-75 shall be applied by the receiving educational institution as a reduction in the amount of the educational costs paid by the applicant, and the total educational costs paid by the applicant shall not exceed the total educational costs paid by any other child in similar circumstances enrolled in the same program in that institution. However, this limitation shall not prohibit the waiving of all or part of the educational costs for a limited number of children based upon demonstrated financial need, and the State Department of Education may adopt and enforce reasonable rules and regulations to carry out the intent of these provisions.

**HISTORY: Codes, 1942, § 6631-52; Laws, 1971, ch. 304, § 2; Laws, 1973, ch. 329, § 1; Laws, 1975, ch. 487, § 2; Laws, 1978, ch. 461, § 9; Laws, 1983, ch. 529, § 3; Laws, 1993, ch. 602, § 9; Laws, 1994, ch. 419, § 1; Laws, 2004, ch. 573, § 2, eff from and after July 1, 2004.**

**Cross References —** Exceptional child defined, see § 37-23-3.
Child defined, see § 37-23-61.
Eligibility to receive financial aid, see § 37-23-63.
Hearings on denials of financial assistance, see § 37-23-73.
Mississippi Adequate Education Program, see § 37-151-1 et seq.
**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## RESEARCH REFERENCES

**Practice References.**
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-71. Commitments for payment of financial assistance.

Upon approving the application for financial assistance, the state department of education shall issue its commitment in writing to the parent or guardian of, or person standing in loco parentis to the applicant, or to the public school district, which said commitment shall be for a specified amount for each day. Payments made under such commitment shall be made by the department, in accordance with the terms of the commitment, and each commitment shall be conditioned upon the applicant's attendance in accordance with his application and the provisions of Sections 37-23-61 through 37-23-75.

**HISTORY: Codes, 1942, § 6631-52; Laws, 1971, ch. 304, § 2; Laws, 1978, ch. 461, § 10, eff from and after July 1, 1978.**

## § 37-23-73. Hearings on denials of financial assistance; appeals.

In the event of disapproval by the state department of education of an application for financial assistance payable from department funds, the department shall give notice to the applicant, through the parent or guardian of, or person standing in loco parentis to, the applicant, or to the public school district, by certified mail. Any applicant, through the parent or guardian of, or the person standing in loco parentis to, the applicant, or to the public school district, may, within ten (10) days after receipt of such notice, apply to the state board of education for a hearing, and shall be given a prompt and fair hearing on the question of entitlement to such financial assistance. The board shall render prompt decision upon such hearing. If the board shall affirm the previous action of disapproval of the application, notice shall be given to the applicant, through the parent or guardian of, or the person standing in loco parentis to, the applicant, or to the public school district, by certified mail. Any applicant aggrieved by the action of the board may, through the parent or guardian of, or the person standing in loco parentis to, the applicant or to the public school district within ten (10) days after receipt of such notice, file a petition in the chancery court of the county in which applicant resides for a hearing in the matter on all questions of fact and of law. The petition shall be served upon the state superintendent of public education. Within thirty (30) days after service of the petition, the board shall prepare and deposit a certified transcript of the record in the case in the office of the clerk of the court, which record shall include a copy of the application and any official findings, orders and rulings of the board in the case. The state board of education shall have thirty (30) days after the service of the petition within which to appear and file exceptions, answers or other pleadings. Additional time for preparation of the certified transcript of the record and for appearing and filing exceptions, answers or other pleadings may be granted to the board by order of the court. The court, after considering the law, the pleadings and such evidence as may be adduced in the case, may modify, affirm or reverse the findings of the board and make, issue and enter its judgment accordingly. Appeal from any such judgment shall be subject to the procedures applicable to appeals in ordinary civil actions.

**HISTORY: Codes, 1942, § 6631-52; Laws, 1971, ch. 304, § 2; Laws, 1978, ch. 461, § 11, eff from and after July 1, 1978.**

**Cross References —** Eligibility to receive financial assistance, see § 37-23-63.
Determination and payment of financial assistance, see § 37-23-69.

## § 37-23-75. Offenses and penalties.

It shall be unlawful for any person to obtain, seek to obtain, expend, or seek to expend, any financial assistance funds for any purpose other than in payment of or in reimbursement for the tuition costs for the attendance of his child or ward at a private school, parochial school or speech, hearing and/or language clinic. A violation of this section shall constitute a misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed five hundred dollars ($500.00), by imprisonment for not more than six (6) months in jail, or both.

**HISTORY: Codes, 1942, § 6631-53; Laws, 1971, ch. 304, § 3; Laws, 1983, ch. 529, § 4, eff from and after July 1, 1983.**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

# EXCEPTIONAL CHILDREN UNDER STATE GUARDIANSHIP

Sec.
37-23-77. Education of exceptional children under guardianship of Department of Human Services.

## § 37-23-77. Education of exceptional children under guardianship of Department of Human Services.

If a child, as defined in Sections 37-23-61 and 37-23-63, is under the legal guardianship of the State Department of Human Services, or any other state agency, and for whom no foster parents are available and no state-funded institution placement is available, funds available under Section 37-23-1 et seq. may be used to provide for the education of the child in an institution approved by the Department of Human Services and the State Department of Education. However, if the educational services needed by the child are available in a state funded institution, these funds shall not be used to pay for educational services at that institution. At any such time a child is taken out of a school setting and placed under the custody of the Department of Human Services, the department shall immediately notify the State Department of Education and apply for funds for the child's educational services under Section 37-23-1 et seq. and the State Department of Education shall respond to the application within ten (10) working days. The special education and related services provided for this child shall be provided in compliance with State Department of Education regulations. The State Department of Education shall promulgate such regulations as are necessary to implement this section.

The State Department of Education shall require that the special education and related services provided for the children under this section be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success.

**HISTORY: Laws, 1981, ch. 526, § 1; Laws, 1994, ch. 550, § 1; Laws, 1995, ch. 572, § 5; Laws, 2004, ch. 573, § 3, eff from and after July 1, 2004.**

**Editor's Notes —** Sections 37-23-7 and 37-23-51 through 37-23-55, referred to in this section, were repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

Sections 37-23-151 through 37-23-157, referred to in this section, were repealed by Laws of 1998, ch. 333, § 1, effective from and after July 1, 1998.

Section 37-23-159, referred to in this section, was repealed by Laws of 1983, ch. 531, § 2, effective from and after September 30, 1983.

**Cross References —** Exceptional child defined, see § 37-23-3.

## DEVELOPMENT CENTER FOR RETARDED AND HANDICAPPED CHILDREN

Sec.

37-23-91. Authorization for establishment.
37-23-93. Eligibility for attendance.
37-23-95. Employment of teachers and other personnel.
37-23-97. Acquisition of necessary lands, equipment and furnishings; acceptance of grants.
37-23-99. Procedure for establishment.
37-23-101. Bonds.
37-23-103. Tax levy.
37-23-105. Election regarding establishment.
37-23-107. Disposition of funds.
37-23-109. Receipt of contributions from federal and state governments.
37-23-111. Location.

### § 37-23-91. Authorization for establishment.

The board of education in any Class 1 county of the state having a total population of more than one hundred thousand (100,000) according to the 1960 census and having a total assessed valuation in excess of Sixty Million Dollars ($60,000,000.00), bordering on the Gulf of Mexico and in which there is a federal military base, under the methods set out in Sections 37-23-91 through 37-23-111, may establish a child development center for children in the county who have an intellectual or physical disability or are otherwise unable to attend public school, including, but not limited to, any child of educable or trainable mind under twenty-one (21) years of age for whose particular educational needs institutional care and training are not available in such county, or who cannot pursue regular classwork due to reason or reasons of defective hearing, vision, speech, intellectual disability or physical conditions, as determined by competent medical authorities and psychologists who are approved by the State Board of Education. This specifically includes, but shall not be limited to, provision for the deaf and blind of an age under six (6) years, where early training is in accordance with the most advanced and best approved scientific methods of instruction, always taking into consideration the best interests of the child and his improvement at a time during which he is most susceptible to improvement.

**HISTORY: Codes, 1942, § 6631-31; Laws, 1968, ch. 423, § 1; Laws, 2010, ch. 476, § 14, eff from and after passage (approved Apr. 1, 2010).**

**Cross References** — Exceptional child defined, see § 37-23-3.
Procedure for establishment of child development center, see § 37-23-99.
Bonds for construction of center, see § 37-23-101.
Tax Levy, see § 37-23-103.
Location of center, see § 37-23-111.

RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-93. Eligibility for attendance.

Any such child in such county shall be eligible to attend the center regardless of the school district within the county in which he lives.

**HISTORY: Codes, 1942, § 6631-32; Laws, 1968, ch. 423, § 2, eff from and after passage (approved June 21, 1968).**

**Cross References** — Exceptional child defined, see § 37-23-3.

## § 37-23-95. Employment of teachers and other personnel.

The county board of education may employ such trained teachers and other personnel as it deems necessary for the proper administration and management of a child development center.

**HISTORY: Codes, 1942, § 6631-33; Laws, 1968, ch. 423, § 3, eff from and after passage (approved June 21, 1968).**

## § 37-23-97. Acquisition of necessary lands, equipment and furnishings; acceptance of grants.

The county board of education may acquire necessary lands, equipment and furnishings by purchase, barter, gift or otherwise and may participate in federal or private grants for the construction, development or operation of such a center.

**HISTORY: Codes, 1942, § 6631-34; Laws, 1968, ch. 423, § 4, eff from and after passage (approved June 21, 1968).**

## § 37-23-99. Procedure for establishment.

The county board of education shall initiate the establishment of such a center by adoption of a resolution stating its intention and shall transmit to the board of supervisors of its county a properly certified copy of such resolution stating its intention to establish a child development center, including estimated costs of land purchase, construction and operational costs per year and the proposed sources of the necessary revenues. The board of supervisors shall make an independent investigation and confirm or deny the need and practicality for such a center.

**HISTORY: Codes, 1942, § 6631-35; Laws, 1968, ch. 423, § 5, eff from and after passage (approved June 21, 1968).**

**Cross References** — Authorization for establishment of child development center,

see § 37-23-91.
Bonds for construction of center, see § 37-23-101.
Tax levy, see § 37-23-103.
Location of center, see § 37-23-111.

## § 37-23-101. Bonds.

If the board of supervisors shall confirm the action of the county board of education, then the board of supervisors may issue bonds in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) to bear the expense, or a portion of it, for the construction of such center. The bonds shall be for a period not to exceed twenty-five (25) years at a rate of interest not to exceed six percent (6%) per annum. Said bonds so issued shall be full faith and credit obligations of such county. The principal of and interest on same shall be paid out of funds made available by said board of supervisors by the annual ad valorem tax levied upon all of the taxable property within the county in an amount necessary to pay the interest thereon as the same becomes due to be paid, and the principal of said bonds as the same falls due to be paid.

**HISTORY: Codes, 1942, § 6631-36; Laws, 1968, ch. 423, § 6, eff from and after passage (approved June 21, 1968).**

**Cross References —** Authorization for establishment of child development center, see § 37-23-91.
Procedure for establishment of child development center, see § 37-23-99.
Tax levy, see § 37-23-103.
Location of center, see § 37-23-111.

## § 37-23-103. Tax levy.

The board of supervisors of any such county is hereby authorized, in its discretion, to levy an ad valorem tax on all taxable property within the county not to exceed two mills, the avails of which shall be used for the construction, operation, furnishings and maintenance of any such center so established. The tax levy herein authorized shall not be reimbursable under the homestead exemption laws of this state.

**HISTORY: Codes, 1942, § 6631-38; Laws, 1968, ch. 423, § 8, eff from and after passage (approved June 21, 1968).**

### OPINIONS OF THE ATTORNEY GENERAL

Taxes levied for the Mississippi Gulf Coast Community College Maintenance and Capital Funds and taxes levied for the Child Development Center are not county funds and, thus, are not eligible to be pledged to fund the debt service resulting from a redevelopment plan. McAdams, March 31, 2000, A.G. Op. #2000-0168.

## § 37-23-105. Election regarding establishment.

There shall be held an election, conforming in all respects to applicable statutes governing special elections, in which the proposition authorized in

Sections 37-23-91 through 37-23-103 shall be submitted for approval or rejection by the electorate of said county. The power and authority to levy taxes or to issue bonds as provided in Sections 37-23-101 and 37-23-103, shall be contingent upon the affirmative vote of a majority of the qualified electors of said county participating in said election.

**HISTORY: Codes, 1942, § 6631-37; Laws, 1968, ch. 423, § 7, eff from and after passage (approved June 21, 1968).**

**Cross References —** Authorization for establishment of child development center, see § 37-23-91.

Procedure for establishment of child development center, see § 37-23-99.

Bonds for construction of center, see § 37-23-101.

Tax levy, see § 37-23-103.

## § 37-23-107. Disposition of funds.

All funds provided for in Sections 37-23-91 through 37-23-111 shall be kept in a separate fund and shall be used exclusively for the construction, operation, furnishings and maintenance of any such center so established. Any funds accumulated which are not used in any fiscal year shall remain in said separate fund for that use in the succeeding year or years. Such funds shall be expended upon order of the county board of education, and by warrant issued by the county superintendent of education.

**HISTORY: Codes, 1942, § 6631-39; Laws, 1968, ch. 423, § 9; Laws, 1970, ch. 385, § 1, eff from and after passage (approved April 3, 1970).**

## § 37-23-109. Receipt of contributions from federal and state governments.

Any child development center created under the provisions of Sections 37-23-91 through 37-23-111 shall be entitled to receive all contributions and benefits allowed to the other school districts from the federal and state governments including, but not limited to, contributions on the basis of the average daily attendance per child, school textbooks and school lunch program.

**HISTORY: Codes, 1942, § 6631-40; Laws, 1968, ch. 423, § 10, eff from and after passage (approved June 21, 1968).**

## § 37-23-111. Location.

Any center created under the provisions of Sections 37-23-91 through 37-23-111 may be constructed at any location within the county either in or outside of a municipality.

**HISTORY: Codes, 1942, § 6631-41; Laws, 1968, ch. 423, § 11, eff from and after passage (approved June 21, 1968).**

**Cross References —** Authorization for establishment of child development center, see § 37-23-91.

Procedure for establishment of child development center, see § 37-23-99.
Bonds for construction of center, see § 37-23-101.
Tax levy for construction of center, see § 37-23-103.

## LEARNING RESOURCES SYSTEM

| Sec. | |
|---|---|
| 37-23-121. | Short title. |
| 37-23-123. | Legislative intent. |
| 37-23-125. | Establishment of system; rules and regulations; employment of personnel; acceptance of funds. |
| 37-23-127. | Advisory committee. |
| 37-23-129. | Services provided. |
| 37-23-131. | General duties of department. |

### § 37-23-121. Short title.

Sections 37-23-121 through 37-23-131 shall be cited as the "Mississippi Learning Resources Law of 1974."

**HISTORY: Laws, 1974, ch. 374, § 1, eff from and after passage (approved March 15, 1974).**

**Cross References —** Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

**RESEARCH REFERENCES**

**Practice References.**
Education Law (Matthew Bender).
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

### § 37-23-123. Legislative intent.

The intent of the legislature of the State of Mississippi, by passage of Sections 37-23-123 through 37-23-131, is to develop and make available to children of this state who are being considered for possible or continued placement in the exceptional child program of diagnostic and evaluation and related services that will raise the quality of education for all such children in the State of Mississippi who are in need of such services.

The intent of the legislature is to provide an overall system to give direction in developing diagnostic and evaluation and related services required for the exceptional child program, to coordinate existing resources in the state for such services, and to provide such services, within the limitation of staff availability, on a statewide basis with priority being given to areas of the state where such services are not available. This service is intended to complement the services presently available from the state department of education and other agencies.

**HISTORY: Laws, 1974, ch. 374, § 2; Laws, 1978, ch. 461, § 12, eff from and after July 1, 1978.**

**Cross References** — Hearing to determine extent of hearing handicap and need for interpreting services in judicial proceedings and custodial situations, see § 13-1-305.

Exceptional child defined, see § 37-23-3.

Sections 37-23-171 through 37-23-181 to Supplement §§ 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-125. Establishment of system; rules and regulations; employment of personnel; acceptance of funds.

(1) The Department of Education is directed to establish a learning resources system to be implemented and administered by the department.

(2) The state board of education shall adopt and promulgate such rules and regulations as are necessary to implement and administer this system.

(3) The department is authorized to employ and train such professional and clerical assistance as is necessary to implement and administer the system.

(4) The department is authorized to accept any federal, state or other governmental funds and any funds from private sources or gifts, grants or donations.

**HISTORY: Laws, 1974, ch. 374, § 3, eff from and after passage (approved March 15, 1974).**

**Cross References** — Services provided, see § 37-23-129.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-127. Advisory committee.

(1) The state superintendent of education shall appoint a learning resources advisory committee for each center not to exceed ten (10) members as the superintendent, in his discretion, deems proper from each of the following groups:

(a) Professional educators actively engaged in the education of exceptional children or youth or in the administration of programs for exceptional youth and children.

(b) Professional educators in higher education dealing with the exceptional children and youth, and closely related areas.

(c) Parents of exceptional children or youth.

(2) The committee shall meet quarterly or upon call of the superintendent, and its functions shall be purely advisory in nature and effect. No compensation or per diem shall be provided committee members, but each member shall be entitled to receive all actual, necessary expenses incurred in discharging official responsibilities, including mileage as authorized by law.

**HISTORY: Laws, 1974, ch. 374, § 4; Laws, 1978, ch. 461, § 13, eff from and after July 1, 1978.**

**Cross References** — Exceptional child defined, see § 37-23-3.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-129. Services provided.

The department shall determine the services to be provided by the system, however, at least the following services will be provided:

(a) Provision of diagnostic and evaluation services to children who are being considered for possible or continued placement in educational programs for exceptional children.

(b) Provision, to personnel providing educational programs for exceptional children, of inservice activities and consultation on the diagnosis and evaluation of exceptional children and on the development of individualized educational programs.

(c) Provision of regional screening team services to schools and agencies providing educational services to exceptional children as required in the "competent professional persons" portion of Section 37-23-3.

(d) Collection and maintenance, for demonstration and loan purposes, of instructional materials, professional literature, and evaluation materials which are appropriate for the exceptional child program.

**HISTORY: Laws, 1974, ch. 374, § 5; Laws, 1978, ch. 461, § 14, eff from and after July 1, 1978.**

**Cross References —** Exceptional child defined, see § 37-23-3.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-131. General duties of department.

The department, in implementing the provisions of Sections 37-23-121 through 37-23-131, shall have the following duties:

(a) To establish in various areas of the state, the location and size of which shall be determined by the department, a team of full-time, qualified professional persons trained, individually or collectively, in such disciplines as psychology, speech and hearing, special education, educational evaluation, and social work. One team shall be provided for each area, and shall render diagnostic evaluation, and related services to all children who are being considered for possible or continued placement in educational programs for exceptional children.

(b) To contract for or purchase services of clinical and medical specialists, including, but not limited to, pediatricians, neurologists and psychiatrists, when such services of specialists are needed and not available from members of a team.

(c) To provide for consultation with school personnel, parents and agencies concerned with exceptional children and to serve as resource personnel to which such persons and agencies may consult for assistance in solving problems related to diagnosis and evaluation of exceptional children.

(d) To provide personnel to serve as a resource in programs of preservice and inservice training of teachers.

(e) To disseminate information to the public with regard to exceptional children.

**HISTORY: Laws, 1974, ch. 374, § 6; Laws, 1978, ch. 461, § 15, eff from and after July 1, 1978.**

**Cross References —** Exceptional child, defined see § 37-23-3.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## STANDARDS AND PROCEDURES FOR THE EDUCATION OF EXCEPTIONAL CHILDREN

Sec.

37-23-133. Definitions.
37-23-135. Eligibility standards for assistance under Individuals with Disabilities Education Act.
37-23-137. Parental consent, involvement, and participation in educational decisions; procedures for evaluations and testing; rights of parents to receive copies of child's educational records.
37-23-139. Complaint procedures.
37-23-141. Mediation; promulgation of rules and regulations; confidentiality.
37-23-143. Due process hearing.
37-23-145. Advisory panel on special education; membership; duties.
37-23-147. State performance goals for children with disabilities; special recognition of schools providing full inclusion of children with disabilities.
37-23-148. Participation in assessment programs by children with disabilities; Department of Education to report on results of assessment of disabled children.
37-23-149. Special Education, Special Services Fund.
37-23-150. Legislative intent.

### § 37-23-133. Definitions.

Words and terms, unless otherwise defined below, when used in Sections 37-23-1 through 37-23-159 shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act 1997 Amendments (IDEA), Family Educational Rights and Privacy Act, applicable federal regulations and relevant court cases:

(a) "Assistive technology device" means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve the functional capabilities of children with disabilities.

(b) "Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition or use of an assistive technology device. The term includes:

(i) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in his or her customary environment;

(ii) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive devices;

(iv) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and

(vi) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers or other individuals who may provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.

(c) "Consent" means agreement in writing from the parent of a child with a disability pertaining to the activities as required under IDEA and the Family Educational Rights and Privacy Act. Local educational agencies shall ensure that the parent:

(i) Has been fully informed of all information relevant to the activity for which consent is required;

(ii) Understands the activity for which consent is requested; and

(iii) Understands that the granting of consent is voluntary and may be revoked at any time prior to the time the activity is conducted.

(d) "Free appropriate public education" means special education and related services provided by local educational agencies that:

(i) Have been provided at public expense, under public supervision and direction, and without charge;

(ii) Meet the standards of the State Department of Education;

(iii) Include an appropriate preschool, elementary, or secondary school education; and

(iv) Are provided in conformity with the individualized education program required under IDEA, applicable federal and state regulations and relevant court cases.

(e) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with the requirements under IDEA, applicable federal and state regulations and relevant court cases.

(f) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(g) "Parent" means a person who is legally responsible for a child's welfare or acting for the child in the absence of the legally responsible person. Parent may also mean a natural parent, a guardian, or a surrogate parent.

(h) "Related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(i) "Special education" means specially designed instruction provided by local educational agencies, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. This term also includes instruction in physical education.

(j) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the least restrictive environment requirements under IDEA, applicable federal regulations and relevant court cases.

(k) "Transition services" means a coordinated set of activities for a student with a disability that:

(i) Is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) Is based upon the individual student's needs, taking into account the student's preferences and interests;

(iii) Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

**HISTORY: Laws, 1999, ch. 582, § 1; Laws, 2001, ch. 554, § 1, eff from and after July 1, 2001.**

**Editor's Notes —** Sections 37-23-7 and 37-23-51 through 37-23-55, referred to in this section, were repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

Sections 37-23-151 through 37-23-157, referred to in this section, were repealed by Laws of 1998, ch. 333, § 1, effective from and after July 1, 1998.

Section 37-23-159, referred to in this section, was repealed by Laws of 1983, ch. 531, § 2, effective from and after September 30, 1983.

**Federal Aspects—** Family Educational Rights and Privacy Act, see 20 USCS § 1232g. Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## RESEARCH REFERENCES

**ALR.**

Availability of damages in action to remedy violations of individuals with Disabilities Education Act (20 U.S.C.S

§§ 1400 et seq.). 165 A.L.R. Fed. 463.

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**Practice References.**
Education Law (Matthew Bender).

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-135. Eligibility standards for assistance under Individuals with Disabilities Education Act.

(1) For the purposes of this section, each local educational agency is eligible for assistance under IDEA Part B for a fiscal year if, in providing for the education of children with disabilities within its jurisdiction, policies, procedures and programs are in effect that are consistent with the regulations established by the State Department of Education.

(2) The local educational agency shall have in effect policies and procedures, and programs that are consistent with the State Department of Education's policies and procedures to ensure:

(a) A free appropriate public education is available to all children with disabilities residing in the state between the ages of three (3) and twenty (20), inclusive. Educational services for children with disabilities who have been suspended or expelled from school shall be provided based on the requirements of IDEA, applicable federal regulations and state regulations;

(b) The full educational opportunity goal established by the state is implemented;

(c) All children with disabilities, who are in need of special education and related services, including children with disabilities attending private school, regardless of the severity of their disabilities, are identified, located, and evaluated;

(d) An individualized education program is developed, reviewed and revised for each child with a disability;

(e) Children with disabilities are provided services within their least restrictive environment;

(f) Children with disabilities and their parents are afforded the procedural safeguards required under IDEA;

(g) Children with disabilities are evaluated as required under IDEA;

(h) The State Department of Education and local education agencies will assure the protection of the confidentiality of any personally identifiable data, information and records collected or maintained as required under IDEA and the Family Rights and Privacy Act.

(i) Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs assisted under IDEA Part B shall experience a smooth transition. An individualized educational program shall be developed and implemented by the child's third birthday;

(j) Children with disabilities enrolled in private schools by their parents shall be provided special education and related services to the extent required under IDEA;

(k) Children with disabilities who are placed in private schools or facilities by the local educational agency shall be provided special education and related services, in accordance with an individualized education program, at no cost to their parents;

(*l*) A comprehensive system of personnel development has been developed to ensure appropriately qualified personnel are available and personnel are trained in accordance with the requirements of the State Department of Education and IDEA;

(m) Personnel providing educational services to children with disabilities meet the personnel standards of the State Department of Education;

(n) The performance goals and indicators shall be implemented as established by the State Board of Education; and

(o) Children with disabilities are included in statewide and district-wide assessment programs, with appropriate accommodations, in accordance with regulations established by the State Board of Education.

(3) The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the agency's eligibility under IDEA.

(4) If the State Department of Education determines that a local educational agency is not eligible to receive federal funds due to compliance violations not being resolved within a specified timeline, the local educational agency shall be notified of that determination and shall be provided with reasonable notice and an opportunity for a hearing. The local educational agency in receipt of such notice, shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action to withhold funds to the attention of the public within the jurisdiction of such agency.

(5) The State Department of Education, after reasonable notice and an opportunity for a hearing, shall reduce or shall not provide any further payments to the local educational agency until the department is satisfied that the violations have been corrected.

**HISTORY: Laws, 1999, ch. 582, § 2, eff from and after July 1, 1999.**

**Cross References —** Free appropriate public education defined, see § 37-23-133(d).

Individualized education program defined, see § 37-23-133(e).

Least restrictive environment defined, see § 37-23-133(f).

Parent defined, see § 37-23-133(g).

Special education and related services defined see § 37-25-133(h) and (i).

**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## RESEARCH REFERENCES

**Am. Jur.**

68 Am. Jur. 2d, Schools §§ 479 et seq.

### § 37-23-137. Parental consent, involvement, and participation in educational decisions; procedures for evaluations and testing; rights of parents to receive copies of child's educational records.

(1) Consent shall be obtained:

(a) Prior to initial evaluation;

(b) Prior to implementation of the initial individualized educational program for a child with a disability;

(c) Prior to reevaluation, except that such consent is not required, if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the parent failed to respond; and

(d) Prior to the release of educational records as required under the Family Educational Rights and Privacy Act and IDEA.

(2) If the parent of a child with a disability refuses consent for the evaluation, the local educational agency may continue to pursue an evaluation by utilizing the due process hearing procedures under IDEA, except to the extent these are not in conflict with Mississippi law relating to parental consent.

(3) Written prior notice shall be provided to the parents of the child whenever a local educational agency proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to that child.

(4) Written prior notice shall be provided in the native language of the parents, unless it clearly is not feasible to do so.

(5) Written prior notice shall include:

(a) A description of the action proposed or refused by the local educational agency;

(b) An explanation of why the local educational agency proposes or refuses to take the action;

(c) A description of any other options that the local educational agency considered and the reasons why those options were rejected;

(d) A description of any other factors that are relevant to the local educational agency's proposal or refusal;

(e) A description of each evaluation procedure, test, record, or report the local educational agency used as a basis for the proposed or refused action;

(f) A description of any factors that are relevant to the local educational agency's proposal or refusal;

(g) A statement that the parents of a child with a disability have protection under the procedural safeguards under IDEA and, if the notice is not an initial referral for evaluation, notification of an individualized educational program meeting or notice for reevaluation, the means by which a copy of a description of procedural safeguards can be obtained; and

(h) Sources for parents to contact to obtain assistance in understanding the provisions under IDEA.

(6) A copy of the procedural safeguards established by the State Department of Education shall be given to the parents upon:

(a) Initial referral for evaluation, reevaluation or parent request for evaluation;

(b) The child's initial IEP meeting;

(c) Registration of a complaint under IDEA to the State Department of Education;

(d) Upon a request by a parent; and

(e) If there is no circumstance giving rise to the purpose of parents receiving a copy of the procedural safeguards under paragraphs (a), (b) and (c) of this subsection, then the parents shall be provided with a copy of the procedural safeguards at least once on an annual basis.

The procedural safeguards shall include provisions which allow parents to be informed of the parental right to record IEP meetings by means of an audio or visual recording device or written transcript at the parent's own expense if they so desire a record of the meeting.

(7) The State Department of Education and each local educational agency shall establish procedures to ensure parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and education placement of the child, and the provision of a free appropriate public education of such child. Local educational agencies shall provide parents of children with disabilities an opportunity to provide input in the development of the agencies' application for funding, as required under IDEA.

(8) The parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least twenty-four (24) hours prior to the meeting.

(9) In conducting the evaluation, the local educational agency shall:

(a) Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

(b) Not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(10) Each local educational agency shall ensure that:

(a) Tests and other evaluation materials used to assess a child are:

(i) Selected and administered so as not to be discriminatory on a racial or cultural basis; and

(ii) Provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(b) Any standardized tests that are given to the child:

(i) Have been validated for the specific purpose for which they are used;

(ii) Are administered by trained and knowledgeable personnel; and

(iii) Are administered in accordance with any instructions provided by the producer of such tests;

(c) The child is assessed in all areas of suspected disability; and

(d) Assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the child are provided.

(11) Upon completion of administration of tests and other evaluation materials:

(a) The determination of whether the child is a child with a disability as defined under IDEA and state regulations established by the State Board of Education shall be made by a team of qualified professionals and the parent of the child and certified by a Screening Team as defined by the State Board of Education;

(b) In making such a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency; and

(c) A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

(12) Parents shall have an opportunity to obtain an independent educational evaluation of their child in accordance with the requirements under IDEA.

(13) An outside individual or entity contracting with a local educational agency for the purpose of performing an observation in order to make recommendations of possible changes in a child's IEP, or any outside individual or entity making an observation of a child which results in such recommendations, shall submit a report of the observation to the local educational agency. The local educational agency shall notify the parent upon receipt of this report.

(14) Parents and guardians shall have the right of review or to receive copies of all educational records, as such records are defined by the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act, pertaining to their child. The local educational agency shall be responsible for making the educational records available to the parent or guardian. The cost of providing a copy of any information contained in a student's educational record to the parents or guardians shall be established by the local school board in accordance with the requirements of the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act.

**HISTORY: Laws, 1999, ch. 582, § 3; Laws, 2001, ch. 554, § 2; Laws, 2011, ch. 492, § 1; Laws, 2012, ch. 548, § 1, eff from and after July 1, 2012.**

**Cross References** — Consent defined, see § 37-23-133(c).

Individualized education program defined, see § 37-23-133(e).

**Federal Aspects**— Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## § 37-23-139. Complaint procedures.

(1) The State Department of Education shall establish the necessary rules and regulations in accordance with IDEA to provide for an organization or individual to file a signed written complaint with respect to a violation of federal or state regulations by a local educational agency relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

(2) Procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice to the State Department of Education shall include:

(a) The name of the child, the address of the residence of the child, and the name of the school the child is attending;

(b) A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(c) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) State Department of Education shall develop a model form to assist parents in filing a complaint in accordance with the requirements under IDEA.

(4) All complaints shall remain protected by the confidentiality requirements under IDEA.

**HISTORY: Laws, 1999, ch. 582, § 4, eff from and after July 1, 1999.**

**Cross References** — Free appropriate public education defined, see § 37-23-133(d).

Parent defined, see § 37-23-133(g).

Mediation system to be available whenever a due process hearing under IDEA is requested, see § 37-23-141.

Due process hearing, see § 37-23-143.

**Federal Aspects**— Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## § 37-23-141. Mediation; promulgation of rules and regulations; confidentiality.

(1) The State Department of Education shall promulgate the necessary rules and regulations to establish a mediation system which, at a minimum, shall be available whenever a due process hearing under IDEA is requested. The mediation system shall allow parties the opportunity to resolve such disputes involving any matter relating to the identification, evaluation or

educational placement of the child, or the provision of a free appropriate public education to such child.

(2) The State Department of Education shall ensure that the mediation process is:

(a) Voluntary on the part of the parties;

(b) Not used to deny or delay a parent's right to a due process hearing under IDEA or to deny any other rights afforded under IDEA; and

(c) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(3) The State Department of Education may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in the state established under IDEA, or an appropriate alternative dispute resolution entity. The purpose of the meeting is to encourage the use, and explain the benefits, of the mediation process to the parents.

(4) The State Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(5) The state shall bear the cost of the mediation process, including the costs of all meetings described in this section.

(6) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties in dispute.

(7) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(8) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

**HISTORY: Laws, 1999, ch. 582, § 5, eff from and after July 1, 1999.**

**Cross References —** Complaint procedures, see § 37-23-139.
Due process hearing, see § 37-23-143.
**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## § 37-23-143. Due process hearing.

(1) When any public agency directly responsible for the education of children with disabilities initiates or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, the parent of a child with a disability or the agency shall have the opportunity to request a state-level impartial due process hearing.

(2) The State Department of Education shall promulgate rules and regulations consistent with the requirements under IDEA to establish a

system for the provision of state-level impartial due process hearings. Such provisions shall include:

(a) At least five (5) business days prior to a hearing being conducted, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(b) A hearing may not be conducted by an employee of the State Department of Education or the local educational agency involved in the education or care of the child.

(c) The right of either party to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(d) The right of either party to present evidence and confront and cross-examine witnesses.

(e) The right, at the option of parents, to a written or electronic verbatim record of such hearing.

(f) The right, at the option of parents, to electronic findings of fact and decisions.

(g) Findings and facts shall be made available to the public and transmitted to the advisory panel consistent with the requirements under IDEA.

(3) The decision made by the hearing officer shall be final, except that any party aggrieved by the findings and decision made by the hearing officer shall have the right to bring a civil action with respect to the issues of the due process hearing. Such civil action may be brought in any court of competent jurisdiction within ninety (90) days from the date of the decision of the impartial due process hearing officer.

(4) Except as provided under IDEA, during the pendency of any proceedings conducted pursuant to this section, unless the local educational agency and the parents otherwise agree, the child will remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed. This requirement does not limit the local educational agency from obtaining a temporary restraining order from any court of competent jurisdiction, as deemed necessary by the agency.

**HISTORY: Laws, 1999, ch. 582, § 6; Laws, 2003, ch. 410, § 1; Laws, 2011, ch. 439, § 1, eff from and after July 1, 2011.**

**Cross References —** Complaint procedures, see § 37-23-139.

Mediation system to be available whenever a due process hearing under IDEA is requested, see § 37-23-141.

**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## § 37-23-145. Advisory panel on special education; membership; duties.

(1) The State Board of Education shall establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(2) The advisory panel shall consist of members appointed by the State Superintendent of Education who are representative of the state's population and who are composed of individuals involved in, or concerned with, the education of children with disabilities, including:

(a) Parents of children with disabilities;

(b) Individuals with disabilities;

(c) Teachers;

(d) Representatives of institutions of higher education that prepare special education and related services personnel;

(e) State and local education officials;

(f) Administrators of programs for children with disabilities;

(g) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

(h) Representatives of private schools and public charter schools;

(i) At least one (1) representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(j) Representatives from the State juvenile and adult correction agencies.

(3) A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

(4) The duties of the advisory panel shall include:

(a) Advise the State Department of Education of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on any rules or regulations proposed by the State Department of Education regarding the education of children with disabilities;

(c) Advise the State Department of Education in developing evaluations and reporting on data to the secretary in accordance with the requirements under IDEA;

(d) Advise the State Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and

(e) Advise the State Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under IDEA.

(5) The advisory panel shall be provided the opportunity to provide comments to the State Board of Education on rules or regulations proposed by the State Department of Education relating to the implementation of the IDEA 1997 Amendments.

**HISTORY: Laws, 1999, ch. 582, § 7, eff from and after July 1, 1999.**

**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## RESEARCH REFERENCES

**ALR.**

Availability of damages in action to remedy violations of individuals with Disabilities Education Act (20 U.S.C.S §§ 1400 et seq.). 165 A.L.R. Fed. 463.

**Practice References.**

IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-23-147. State performance goals for children with disabilities; special recognition of schools providing full inclusion of children with disabilities.

(1) The State Department of Education shall establish goals for the performance of students with disabilities that will promote the purpose of IDEA and are consistent, to the maximum extent appropriate, with other goals and standards for students established by the State Department of Education. Performance indicators used to assess progress toward achieving those goals that, at a minimum, address the performance of students with disabilities on assessments, drop-out rates, and graduation rates shall be developed. Every two (2) years, the progress toward meeting the established performance goals shall be reported to the public.

(2) To encourage the full inclusion of students with disabilities in all aspects of academic and extracurricular activities, the State Department of Education may provide special recognition to the schools receiving such designation and their school districts. Examples of such recognition may include, but not be limited to: public announcements and events, certificates of recognition and plaques for teachers, principals, superintendents and parents, and media announcements utilizing the services of Mississippi Educational Television. This special recognition may be awarded to elementary, middle or high schools, based on entries submitted to the Mississippi Special Education Advisory Panel by the deadline to be determined annually by the panel. These entries shall be in the form of a report, listing the name, address and telephone number of the school district/school; teacher or staff responsible for administering the program; type of position held by each of these employees including credentials; description of the program; number of students with disabilities included; type and level of severity of disabilities; number of students without disabilities involved in the program; how long the program has been in operation; benefit of program to all students; and a description of how this program could be replicated by other school districts. Winners of the Exemplary Inclusion Program contest shall be chosen annually by the Mississippi Special Education Advisory Panel at a date determined by the panel.

Recognition may be given to these schools during a meeting of the Mississippi State Board of Education at a date determined by the board.

Information on these exemplary programs shall be provided to other school districts and the general public through news releases, the state department website, and other similar avenues.

**HISTORY: Laws, 1999, ch. 582, § 8; Laws, 2000, ch. 317, § 1; Laws, 2017, ch. 438, § 3, eff from and after July 1, 2017.**

**Cross References** — Awards for exemplary performing public schools and school programs, see § 37-3-75.

**Federal Aspects**— Individuals with Disabilities Education Act, see 20 USCS § 1400 et seq.

## § 37-23-148. Participation in assessment programs by children with disabilities; Department of Education to report on results of assessment of disabled children.

(1) Children with disabilities shall be included in general statewide and district-wide assessments programs, with appropriate accommodations, where necessary. As appropriate, the State Department of Education and the local educational agency shall:

(a) Develop policies and procedures for the participation of children with disabilities in alternate assessments for those children who cannot participate in statewide and district-wide assessment programs; and

(b) Develop and, beginning not later than July 1, 2000, conduct those alternate assessments.

(2) The State Department of Education shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(a) The number of children with disabilities participating in regular assessments;

(b) The number of children participating in alternate assessments;

(c) The performance of those children on regular assessments, beginning not later than July 1, 1998, and on alternate assessments, not later than July 1, 2000, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children; and

(d) Data relating to the performance of children with disabilities shall be disaggregated for assessments conducted after July 1, 1998.

**HISTORY: Laws, 1999, ch. 582, § 9, eff from and after July 1, 1999.**

**Cross References** — Statewide testing program, see § 37-16-1 et seq.

## § 37-23-149. Special Education, Special Services Fund.

There is hereby created in the State Treasury a special fund to be designated as the "Special Education, Special Services Fund" which shall be used to distribute any funds specifically appropriated by the Legislature to such fund. This Special Education, Special Services Fund will be used solely for the provision of direct services to individual children with disabilities. Any funds remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, but shall carryover to subsequent fiscal years. Any interest accruing on any unexpended balance in the Special Education, Special Services Fund shall be invested by the State Treasurer and shall remain in the fund.

**HISTORY: Laws, 1999, ch. 582, § 10, eff from and after July 1, 1999.**

### § 37-23-150. Legislative intent.

It is the intent of the Legislature that none of the provisions of Sections 37-16-9, 37-23-1 through 37-23-9 and 37-23-133 through 37-23-149 shall create mandates that impose financial or legal requirements upon local school districts that are greater or more restrictive upon local school districts as required by the Individuals with Disabilities Education Act of 1997 and any later amendments or regulations thereunder, or any other relevant federal legislation. Furthermore, it is not the intent of the Legislature to impose any additional state unfunded mandates for the implementation of Sections 37-16-9, 37-23-1 through 37-23-9 and 37-23-133 through 37-23-149. Any provisions of Sections 37-16-9, 37-23-1 through 37-23-9 and 37-23-133 through 37-23-149 that are inconsistent, create additional unfunded state mandates, or that are more restrictive upon school districts than federal requirements shall be expressly unenforceable and have no effect.

**HISTORY: Laws, 1999, ch. 582, § 17; Laws, 2010, ch. 353, § 2, eff from and after July 1, 2010.**

**Editor's Notes** — Section 37-23-7, referred to in this section, was repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

## REGISTRATION OF PERSONS HAVING IMPAIRED HEARING OR VISION [REPEALED]

Sec.
37-23-151 through 37-23-157. Repealed.

### §§ 37-23-151 through 37-23-157. Repealed.

Repealed by Laws, 1998, ch. 333, § 1, eff from and after July 1, 1998.
§ 37-23-151. [Laws, 1974, ch. 553, § 1]
§ 37-23-153. [Laws, 1974, ch. 553, § 2]
§ 37-23-155. [Laws, 1974, ch. 553, § 3]
§ 37-23-157. [Laws, 1974, ch. 553, § 4]

**Editor's Notes** — Former § 37-23-151 related to the establishment and purpose of the registration program for persons with hearing or vision impairments.

Former § 37-23-153 related to the maintenance of a state registry for persons with visual or hearing impairments and the confidentiality of information contained in the registry.

Former § 37-23-155 related to announcement of the registry program and reporting requirements.

Former § 37-23-157 related to construction of the registry provisions and public agency assistance in the program.

## COUNTY CONTRIBUTION TO DEFRAY COSTS OF LEARNING DISABILITY PROGRAM [REPEALED]

Sec.
37-23-159. Repealed.

### § 37-23-159. Repealed.

Repealed by Laws, 1983, ch. 531, § 2, eff from, and after September 30, 1983.

§ 37-23-159. [Laws, 1983, ch. 531, § 1]

**Editor's Notes** — Former § 37-23-159 authorized the board of supervisors of any county to contribute out of federal revenue sharing funds to any school district located within the county to be used for a learning disability program.

## GIFTED EDUCATION

Sec.
37-23-171. Short title.
37-23-173. Legislative findings and declarations; purpose.
37-23-175. Definitions.
37-23-177. General powers and duties of board of education.
37-23-179. Promulgation of rules, regulations, and guidelines; office for gifted education; implementation of programs of gifted education by local school districts; funding of programs.
37-23-181. Relationship of provisions with §§ 37-23-121 through 37-23-131.

### § 37-23-171. Short title.

Sections 37-23-171 through 37-23-181 shall be known and may be cited as the "Mississippi Gifted Education Act of 1989."

**HISTORY: Laws, 1989, ch. 447, § 1, eff from and after July 1, 1989.**

#### RESEARCH REFERENCES

**ALR.**

Special education requirements of gifted students. 115 A.L.R.5th 183.

**Practice References.**

Education Law (Matthew Bender).

### § 37-23-173. Legislative findings and declarations; purpose.

The Legislature finds and declares that there are many children in the

State of Mississippi who are intellectually, academically, creatively and/or artistically gifted and who require additional opportunities to allow them to develop their capabilities to their fullest potential.

Consequently, it is the purpose of Sections 37-23-171 through 37-23-181 to provide for a uniform system of education for gifted children in the public schools of Mississippi, to provide for a nondiscriminatory process of identification of these children, to provide for periodic evaluation of the program and its benefit to the gifted children, and to insure that gifted children are identified and offered an appropriate education.

Further, it is the intent of the Legislature that local districts be given as much flexibility as possible in the operation of their programs and that there be parental involvement in the development and conduct of their programs.

**HISTORY: Laws, 1989, ch. 447, § 2; Laws, 1993, ch. 585, § 1, eff from and after July 1, 1993.**

**Cross References —** Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-175. Definitions.

For purposes of Sections 37-23-171 through 37-23-181, the following terms shall have the following meanings unless the context shall prescribe otherwise:

(a) "Gifted children" shall mean children who are found to have an exceptionally high degree of intellect, and/or academic, creative or artistic ability.

(b) "Gifted education" shall mean programs for instruction of intellectually gifted children within Grades 2 through 12 and programs for instruction of academically gifted children within Grades 9 through 12 and programs for instruction of creative or artistically gifted children within Grades 2 through 12 of the public elementary and secondary schools of this state. Such programs shall be designed to meet the individual needs of gifted children and shall be in addition to and different from the regular program of instruction provided by the district.

(c) "Department" shall mean the State Department of Education.

(d) "Board" shall mean the State Board of Education.

**HISTORY: Laws, 1989, ch. 447, § 3; Laws, 1993, ch. 585, § 2, eff from and after July 1, 1993.**

**Cross References —** Exceptional child defined, see § 37-23-3.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-177. General powers and duties of board of education.

The board shall have the following powers, duties and responsibilities:

(a) To promulgate and enforce rules, regulations and guidelines to implement the provisions of Sections 37-23-171 through 37-23-181;

(b) To provide technical assistance to local school district personnel in the development, implementation, evaluation and modification of gifted education programs for gifted children;

(c) To review and approve or deny all local school district gifted education programs, or changes therein, submitted pursuant to Sections 37-23-171 through 37-23-181;

(d) To accept and distribute federal funds or funds made available from other sources;

(e) To develop certification requirements for all teaching or nonteaching personnel employed in gifted education programs;

(f) To develop staff development programs for personnel employed in gifted education programs;

(g) To collect such data from all local school districts as may be required to implement Sections 37-23-171 through 37-23-181;

(h) To disseminate information on quality gifted education programs; and

(i) To withhold funds from any school district which refuses or fails to comply with the provisions of Sections 37-23-171 through 37-23-181.

**HISTORY: Laws, 1989, ch. 447, § 4, eff from and after July 1, 1989.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

## § 37-23-179. Promulgation of rules, regulations, and guidelines; office for gifted education; implementation of programs of gifted education by local school districts; funding of programs.

(1) The board shall specifically promulgate rules, regulations and guidelines which establish model programs of gifted education and also establish minimum criteria for gifted education programs. In providing programs of gifted education, the local district may use the model programs prepared by the board or may itself develop programs of gifted education which, prior to being implemented, shall be approved by the board, provided, that no such plan or program shall be approved or continued unless it meets the minimum criteria established by the board.

(2) There is hereby created within the department an office for gifted education which shall be staffed by such professional, support and clerical personnel as may be necessary to implement the provisions of Sections 37-23-171 through 37-23-181.

(3) All local school districts may have programs of gifted education for intellectually, creatively and/or artistically gifted students in Grades 2 through 12 and for academically gifted students in Grades 9 through 12 approved by the board. Beginning with the 1993-1994 school year, all local school districts

shall have programs of gifted education for intellectually gifted students in Grade 2, subject to the approval of the State Board of Education and the availability of funds appropriated therefor by line-item. Beginning with the 1994-1995 school year, all local school districts shall have programs of gifted education for intellectually gifted students in Grades 2 and 3, subject to the approval of the State Board of Education. Beginning with the 1995-1996 school year, all local school districts shall have programs of gifted education for intellectually gifted students in Grades 2, 3 and 4 subject to the approval of the State Board of Education. Beginning with the 1996-1997 school year, all local school districts shall have programs of gifted education for intellectually gifted students in Grades 2, 3, 4 and 5, subject to the approval of the State Board of Education. Beginning with the 1997-1998 school year, all local school districts shall have programs of gifted education for intellectually gifted students in Grades 2, 3, 4, 5 and 6, subject to the approval of the State Board of Education. The programs shall be funded as a part of the exceptional child programs in accordance with Section 37-19-5(3). Each local school district shall include as a part of its five-year plan a description of any proposed gifted education programs of the district. State funded teacher units for gifted education programs for fiscal year 1994 and thereafter shall be at least the number funded for gifted education programs for fiscal year 1993 and any additional numbers that may be funded by appropriation of the Legislature for those programs. Additional programs above the number authorized statewide and expansion of programs using state funds shall be allowed only in years in which the funding for gifted education teacher units exceeds the number funded for fiscal year 1993. In the Minimum Education Program appropriation bill each year, there shall be a line item specifying the number of special education teacher units that are to be used for gifted education programs.

**HISTORY: Laws, 1989, ch. 447, § 5; Laws, 1992, ch. 503, § 1; Laws, 1993, ch. 585, § 3, eff from and after July 1, 1993.**

**Editor's Notes —** Section 37-19-5, referred to in (3), was repealed by Laws of 1997, ch. 612, § 30, effective July 1, 2002.

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

Sections 37-23-171 through 37-23-181 to supplement § 37-23-121 through 37-23-131, see § 37-23-171 et seq.

### § 37-23-181. Relationship of provisions with §§ 37-23-121 through 37-23-131.

Sections 37-23-171 through 37-23-181 shall be in addition to and supplemental to the provisions of Sections 37-23-121 through 37-23-131, known as the "Mississippi Learning Resources Law of 1974."

**HISTORY: Laws, 1989, ch. 447, § 6; Laws, 1992, ch. 396 § 3, eff from and after passage (approved April 27, 1992).**

## BLIND PERSONS' LITERACY RIGHTS AND EDUCATION

Sec.

37-23-191. Short title.
37-23-193. Definitions.
37-23-194. Provision of educational services to blind or visually impaired students by certain specialized professionals.
37-23-195. Individualized educational program (IEP) or 504 Plan required for each blind or visually impaired student.
37-23-197. Eligibility for instruction in Literary and Nemeth Braille reading and writing; determination of need for Braille instruction or use.
37-23-199. Textbook publishers that sell textbooks published after December 2008 to furnish certain electronically formatted files compatible with Braille conversion for literary and nonliterary subjects.
37-23-201. Advisory committee; composition; duties.
37-23-203. Certification of teachers in education of blind and visually impaired students; adoption of Braille as core subject for blind and visually impaired students.
37-23-205. Certified Teacher of the Visually Impaired Scholarship Program established.

### § 37-23-191. Short title.

Sections 37-23-191 through 37-23-203 may be cited as the "Blind Persons' Literacy Rights and Education Act."

**HISTORY: Laws, 1995, ch. 571, § 1, eff from and after July 1, 1995.**

#### RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**
78A C.J.S., Schools and School Districts § 995.

**Practice References.**
Education Law (Matthew Bender).

### § 37-23-193. Definitions.

For purposes of Sections 37-23-191 through 37-23-203, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly indicates otherwise:

(a) "Blind student" means an individual who is eligible for special education services or 504 services and who has an impairment in vision that, even with correction, adversely affects the student's educational performance. This includes a student who:

(i) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of less than twenty-one (21) degrees;

(ii) Has a medically indicated expectation of visual deterioration; or

(iii) Is functionally blind due to visual problems affecting reading and writing skills.

(b) "Braille" means the system of reading and writing through touch and includes literary code, designated commonly as the Unified English Braille Code or the Standard English Braille Code, Nemeth Braille Code for Mathematics and Science Notation, Music Braille Code and Computer Braille Code.

(c) "Individualized educational program" (IEP) means a statement developed for a student eligible for special education services under Section 602(a)(20) of Part B of the Individuals with Disabilities Education Act.

(d) "Assistive technology service" means any service or provision of devices which directly assists the functional capabilities of a blind or visually impaired student.

(e) "Compensatory skills" or "alternative techniques" means those skills or techniques needed by blind or visually impaired students to access all areas of the Mississippi Curriculum Frameworks. These skills include, but are not limited to: the use of Braille, large print, optical devices, tactile symbols, calendar systems and abacus; study and organizational skills; listening skills; concept development; the use of assistive technology and recorded materials; social interaction; independent living; recreation and leisure skills; and career education.

(f) "504 Plan" means a legal document under the provisions of the Rehabilitation Act of 1973 which is designed to plan a program of instructional services to assist a student with specialized needs who is in a general education setting.

**HISTORY: Laws, 1995, ch. 571, § 2; Laws, 2008, ch. 380, § 1; Laws, 2012, ch. 474, § 1, eff from and after July 1, 2012.**

**Federal Aspects—** Section 602(a)(20) of Individuals with Disabilities Education Act, see 20 USCS § 1401(a)(20). Rehabilitation Act of 1973 generally, see 29 USCS §§ 701 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**

78A C.J.S., Schools and School Districts § 995.

## § 37-23-194. Provision of educational services to blind or visually impaired students by certain specialized professionals.

Contingent upon appropriated funding for teacher scholarships authorized under Chapter 562, Laws of 2012, students who are blind or visually impaired shall receive educational services from the following types of specialized professionals:

(a) Certified Teachers of the Visually Impaired (TVI), who are trained professionals having specialized knowledge and skills in the education of students with visual impairments. These teachers shall provide consultative services and instruction to blind or visually impaired students in the areas of communication literacy, daily living, social and emotional skills, academic support and career education.

(b) Orientation and Mobility (O&M) Specialists, who are professionals trained and certified in orientation and mobility. O& M Specialists shall provide consultative services and instruction to blind or visually impaired students in tools and techniques used by blind or visually impaired individuals to orient themselves and move independently and safely in their environments.

(c) Teachers of the Visually Impaired (TVI), who are competent in reading and writing Literary Braille and Nemeth Code as certified by successful passage of the Mississippi Praxis II Braille Competency Exam.

**HISTORY: Laws, 2008, ch. 380, § 2; Laws, 2012, ch. 474, § 2, eff from and after July 1, 2012.**

**Cross References —** IEP or 504 Plan to be written in consultation with certified teacher of the visually impaired under certain circumstances, see § 37-23-197.

## § 37-23-195. Individualized educational program (IEP) or 504 Plan required for each blind or visually impaired student.

(1) Each appropriate educational entity shall provide for the development of an IEP or 504 Plan for each blind or visually impaired student eligible for educational services or equipment, or both, under Sections 37-23-1 through 37-23-157. In developing the written IEP or 504 Plan for each blind or visually impaired student, there shall be a presumption that proficiency in Braille reading and writing is essential for the student to achieve satisfactory educational progress.

(2) Each appropriate educational entity, in compliance with 20 USCS Section 1414(d)(3)(B)(iii), the Individuals with Disability Education Act, as reauthorized in 2004, shall provide for instruction in Braille and the use of Braille unless the IEP Committee determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child.

(3) The assessment required for each student shall be conducted by a TVI and shall include, at a minimum, a research based learning media assessment and functional vision assessment, and if necessary in the determination of the IEP Committee, a comprehensive assistive technology evaluation. The assess-

ment shall include a statement of the student's academic and functional strengths, deficits and future needs. If, in the course of developing a student's IEP or 504 Plan or in the review of the research based assessment and consideration of a student's future needs, the majority of the members of the team concur that the student's visual impairment and future needs do not affect reading and writing performance commensurate with ability, then Braille instruction and its use shall not be required by this section for that student. Nothing in this section shall require the exclusive use of Braille when other specialized educational services and assistive technology devices are determined more appropriate by the IEP Committee for the student's educational needs.

(4) No student shall be denied the opportunity for instruction in Braille reading and writing only because the student has some residual vision.

(5) The parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least twenty-four (24) hours prior to the meeting.

**HISTORY: Laws, 1995, ch. 571, § 3; Laws, 2008, ch. 380, § 3; Laws, 2012, ch. 474, § 3; Laws, 2012, ch. 548, § 3, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Section 3 of ch. 474, Laws, 2012, effective July 1, 2012, amended this section. Section 3 of ch. 548, Laws, 2012, effective July 1, 2012, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

**Editor's Notes —** Sections 37-23-7 and 37-23-51 through 37-23-55, referred to in this section, were repealed by Laws of 1978, ch. 461, § 16, effective from and after July 1, 1978.

Sections 37-23-151 through 37-23-157, referred to in this section, were repealed by Laws of 1998, ch. 333, § 1, effective from and after July 1, 1998.

**Cross References —** Individualized educational program defined, see § 37-23-193(c).

Assistive technology device defined, see § 37-23-193(d).

504 Plan defined, see § 37-23-193(f).

IEP or 504 Plan to be written in consultation with certified teacher of the visually impaired under certain circumstances, see § 37-23-197.

**Federal Aspects—** Individuals with Disabilities Education Act, see 20 USCS §§ 1400 et seq.

## RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**
78A C.J.S., Schools and School Districts
§ 995.

## § 37-23-197. Eligibility for instruction in Literary and Nemeth Braille reading and writing; determination of need for Braille instruction or use.

(1) Each blind student, as determined by the IEP Committee, shall be eligible for instruction in Literary and Nemeth Braille reading and writing codes which will sufficiently enable that student to communicate effectively and efficiently with the same level of proficiency expected of the student's peers of comparable ability and grade level.

(2) It shall be the standard procedure for the IEP or 504 Team under Section 37-23-195 that Braille instruction or the use of Braille is required for the student, and the student's IEP or 504 Plan must be written in consultation with a Certified Teacher of the Visually Impaired.

(3) If the IEP or 504 team determines procedures other than the standard for the appropriate reading and writing media of a student are required, its decision must be based on the current ability and needs as well as the future needs of the student, considering the following:

(a) For a student with some residual vision where the team decides that large print, or large print in combination with Braille, is the appropriate reading and writing media, then that decision must be supported by a statement from a TVI declaring that the appropriate reading and writing media for that student is not Braille; and

(b) The reading and writing media of a student with some residual vision shall be determined after a TVI has administered and reviewed the results of a research-based learning media assessment and reviewed a student's current reading and writing skill level in comparison to levels expected of the student's sighted peers as determined by the IEP Committee.

**HISTORY: Laws, 1995, ch. 571, § 4; Laws, 2008, ch. 380, § 4; Laws, 2012, ch. 474, § 4, eff from and after July 1, 2012.**

**Cross References** — Blind student defined, see § 37-23-193(a).
504 Plan defined, see § 37-23-193(f).
Certified teacher of the visually impaired, see § 37-23-194.
Assessment of students to include Braille skills inventory or comprehensive assistive technology evaluation, see § 37-23-195.

## RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**
78A C.J.S., Schools and School Districts
§ 995.

## § 37-23-199. Textbook publishers that sell textbooks published after December 2008 to furnish certain electronically formatted files compatible with Braille conversion for literary and nonliterary subjects.

(1) All textbook publishers that sell textbooks published after December 2008 to school districts within the state must furnish the State Department of Education with computer files for literary and nonliterary subjects in the National Instructional Media Access Standard (NIMAS) from which Braille, audio and large print versions of the textbooks can be produced. The publishers also shall furnish the department with NIMAS files, American Standard Code for Information Interchange (ASCII) or other electronically formatted files compatible with Braille conversion for all adopted textbooks and supplementary materials, in both literary and nonliterary subjects, including natural sciences, computer science, mathematics and music, published after December 2008. All books purchased must have appropriate accompanying reproduction files.

(2) The State Board of Education shall promulgate and publish regulations, policies, and procedures for the administrative operation of the Mississippi Instructional Resource Center (MIRC) to further assure that blind and visually impaired students are annually identified and registered in order that all materials and textbooks required by blind and visually impaired students are received and distributed at the same time and in the same manner as textbooks and materials for their sighted peers. The MIRC manual must address, but is not limited to, addressing the following:

(a) The Federal Quota Program, established to promote the educational interests of blind and visually impaired students, which qualifies the state for funds from American Printing House for the Blind;

(b) The on-time delivery of textbooks and materials to blind and visually impaired students, so that the delivery of Braille and large print textbooks and all related supplementary materials will be commensurate with the delivery of regular print textbooks and materials for sighted students as outlined in textbook policies and procedures effective January 1, 2013; and

(c) Communication policies between MIRC, the department and local school districts designating a timeline for book orders, confirmations of orders, status and tracking of orders, delivery dates of orders and the return of books at the end of use by a district.

(3) The board also shall develop and publish policies and procedures for

support for district level production of literary and nonliterary Braille textbooks and materials by August 1, 2013, in order to better facilitate the on-time delivery of textbooks to blind and visually impaired students.

**HISTORY: Laws, 1995, ch. 571, § 5; Laws, 2008, ch. 380, § 5; Laws, 2012, ch. 474, § 5, eff from and after July 1, 2012.**

**Cross References —** Textbooks generally, see § 37-43-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**
78A C.J.S., Schools and School Districts § 995.

## § 37-23-201. Advisory committee; composition; duties.

(1) Before December 1, 2008, the State Board of Education shall appoint an ongoing Advisory Committee to expedite the implementation of Sections 37-23-191 through 37-23-203. The Advisory Committee shall be composed of at least twelve (12) persons nominated by the State Superintendent of Public Education from within or outside of the state, including, but not limited to, representatives of the following groups:

(a) The National Federation of the Blind;

(b) The Mississippi Council of the Blind;

(c) A parent or guardian of a blind student;

(d) The Coalition for Citizens with Disabilities;

(e) Special education directors having one or more blind or visually impaired students in their respective school districts;

(f) Specialists in Braille education or deaf-blindness or certified teachers of the blind and visually impaired students, or both. Specialists in Braille shall be deemed competent in reading and writing Literary Braille and Nemeth Code as certified by successful passage of the Mississippi Praxis II Braille Competency Exam and/or certified under National Certification in Literary Braille;

(g) Employees of the State Department of Education;

(h) Consumers, or an advocate of consumers, of Braille materials;

(i) The Mississippi School for the Blind;

(j) The Mississippi Instructional Resource Center; and

(k) Individuals from higher education programs that address issues specific to visual impairment.

(2) The State Superintendent of Public Education shall appoint a chairperson from among the members of the Advisory Committee. The committee shall meet at least semiannually upon the call of the superintendent, and its functions shall be to perform the duties prescribed in subsection (3) of this section. Members of the committee shall receive no compensation or per diem,

but each member shall be entitled to reimbursement for all actual and necessary expenses incurred by his participation in the committee's activities.

(3) The committee shall perform the following duties:

(a) Provide expertise to maximize collaboration with the National Instructional Materials Access Center (NIMAC) at the American Printing House for the Blind and, when necessary, textbook publishers on the development of NIMAS and associated graphics files to be converted into accessible textbooks with translation software;

(b) Recommend potential authorized users for the NIMAS program to the State Director of Special Education to ensure that all accessible textbook needs are met within the state on a timely basis, being no later than such time that all other students receive their corresponding textbooks;

(c) Study any other issues that the committee determines are relevant and necessary to the implementation of this article and to the improvement of the education of students who are blind or visually impaired in Mississippi; and

(d) Assist the State Department of Education in promulgating regulations, policies and procedures in implementing Sections 37-23-191 through 37-23-203.

(4) The State Superintendent of Public Education shall respond to the recommendations of the Advisory Committee within sixty (60) days of the annually published report.

**HISTORY: Laws, 1995, ch. 571, § 6; Laws, 2008, ch. 380, § 6; Laws, 2012, ch. 474, § 6, eff from and after July 1, 2012.**

### RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**
78A C.J.S., Schools and School Districts
§ 995.

## § 37-23-203. Certification of teachers in education of blind and visually impaired students; adoption of Braille as core subject for blind and visually impaired students.

(1) As part of the certification process, teachers certified in the education of blind and visually impaired students shall be required to demonstrate competence in reading and writing Braille after January 1, 2010. The State Department of Education shall adopt procedures to assess such competencies.

(2) The department shall recognize Braille and Orientation Mobility as core subject areas for all blind students, as deemed appropriate by the IEP Committee for all areas of the Expanded Core Curriculum (ECC). The department shall adopt proficiency and competency in reading and writing of

Literary Braille and Nemeth Code as a minimal standard for all teachers of the blind certified after January 1, 2010.

(3) Competency in reading and writing Literary Braille and Nemeth Code must be exhibited by an individual passing the Mississippi Praxis II Braille Competency Exam.

(4) The adoption of Braille as a core subject for blind and visually impaired students recognizes that the teaching of Braille is a unique educational need unparalleled by any other subject or skill taught to either general or special education students.

(5) The Expanded Core Curriculum (ECC) is the body of knowledge and skills that are needed by students with visual impairments due to their unique disability-specific needs. Students with visual impairments need the Expanded Core Curriculum in addition to the core academic curriculum of general education. The ECC should be used as a framework for assessing students, planning individual goals and providing instruction. The ECC includes compensatory or functional academic skills, including communication modes, orientation and mobility, social interaction skills, independent living skills, recreation and leisure skills, career education, use of assistive technology, sensory efficiency skills and self-determination.

**HISTORY: Laws, 1995, ch. 571, § 7; Laws, 2008, ch. 380, § 7; Laws, 2012, ch. 474, § 7, eff from and after July 1, 2012.**

## RESEARCH REFERENCES

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 479 et seq.

**CJS.**
78A C.J.S., Schools and School Districts
§ 995

## § 37-23-205. Certified Teacher of the Visually Impaired Scholarship Program established.

There is hereby established the Certified Teacher of the Visually Impaired Scholarship Program. The program shall be operated by the Mississippi Instructional Resource Center (MIRC). MIRC shall develop rules and regulations to implement a scholarship program to assist Certified Teachers of the Visually Impaired in taking and passing the Mississippi Praxis II Braille Competency Exam and/or becoming certified under National Certification in Literacy Braille. Funding for this program shall be administered through a special fund at the Mississippi Department of Education and shall be subject to appropriation.

**HISTORY: Laws, 2012, ch. 562, § 3, eff from and after July 1, 2012.**

# CHAPTER 24.

# MISSISSIPPI YOUTH CONCUSSION LAW

Sec.

37-24-1. Short title.
37-24-3. Definitions.
37-24-5. Concussion management and return to play policy; components.
37-24-7. Concussion recognition education course; materials.
37-24-9. Immunity.

## § 37-24-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Youth Concussion Law."

**HISTORY: Laws, 2014, ch. 301, § 1, eff from and after July 1, 2014.**

## § 37-24-3. Definitions.

As used in this chapter, the following words and phrases have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Health care provider" means a licensed physician or a licensed nurse practitioner, licensed physician assistant or licensed health care professional working within the person's scope of practice and under the direct supervision or written consultation of a physician. All health care providers referred to in this chapter also must be trained in the evaluation and management of concussions.

(b) "School athletic event" means activities sanctioned by the Mississippi High School Activities Association (MHSAA) or the Mississippi Association of Independent Schools (MAIS), and school-sponsored activities in Grades 7 through 12 of schools that are not members of the MHSAA or the MAIS which activities are organized and conducted in a manner substantially similar to activities that are sanctioned by the MHSAA or the MAIS.

**HISTORY: Laws, 2014, ch. 301, § 2, eff from and after July 1, 2014.**

## § 37-24-5. Concussion management and return to play policy; components.

Each local board of education, administration of a nonpublic school, and governing body of a charter school shall adopt and implement a concussion management and return to play policy that includes the following components:

(a) Parents or guardians shall receive and sign a copy of the concussion policy before the start of the regular school athletic event season.

(b) An athlete who reports or displays any symptoms or signs of a concussion in a practice or game setting shall be removed immediately from the practice or game. The athlete shall not be allowed to return to the practice or game for the remainder of the day regardless of whether the athlete appears or states that he or she is normal.

(c) The athlete shall be evaluated by a health care provider working within the provider's scope of practice.

(d) If an athlete has sustained a concussion, the athlete shall be referred to a licensed physician, preferably one with experience in managing sports concussion injuries.

(e) The athlete who has been diagnosed with a concussion shall be returned to play only after full recovery and clearance by a health care provider.

(f) An athlete shall not return to a competitive game before demonstrating that he or she has no symptoms in a full supervised practice.

(g) Athletes shall not continue to practice or return to play while still having symptoms of a concussion.

**HISTORY: Laws, 2014, ch. 301, § 3, eff from and after July 1, 2014.**

## § 37-24-7. Concussion recognition education course; materials.

The State Department of Health shall endorse one (1) concussion recognition education course to provide information to Mississippians of the nature and risk of concussions in youth athletics, which shall be available online. Such course may include education and training materials made available, at no charge, by the federal Centers for Disease Control and Prevention or other training materials substantively and substantially similar to those materials.

**HISTORY: Laws, 2014, ch. 301, § 4, eff from and after July 1, 2014.**

## § 37-24-9. Immunity.

This chapter does not create any liability for, or create a cause of action against, a school or its officers or employees, a health care provider, an organization or association of which a school or school district is a member, a private or public school, a private club, a public recreation facility, or an athletic league when such person or entity has complied with the provisions of this chapter.

**HISTORY: Laws, 2014, ch. 301, § 5, eff from and after July 1, 2014.**

# CHAPTER 25.

# DRIVER EDUCATION AND TRAINING

Sec.

37-25-1. Declaration of purpose.
37-25-3. Establishment and maintenance of driver education and training program.
37-25-5. Promulgation of rules and regulations; contents of program; budget; administration of program.
37-25-7. Student eligibility for instruction; learners' permits.
37-25-9. Repealed.
37-25-11. Determination of cost of program.
37-25-13. Allowances to districts for program.
37-25-15. Repealed.
37-25-17. Driver Training Penalty Assessment Fund.
37-25-19. Repealed.
37-25-21. Waiver of driver training penalty assessment.
37-25-23. Purchase of necessary equipment, aids and devices and materials; effect of repeal of statutory authority to purchase liability insurance.
37-25-25. Repealed.
37-25-27. Payment of funds expended under chapter.
37-25-29. Driver education program to include instruction in how a person should properly respond when stopped by law enforcement officers; curriculum to include drivers' constitutional rights.

## § 37-25-1. Declaration of purpose.

The aims and purposes of driver's education and training shall be to develop a knowledge of those provisions of the Mississippi Code of 1972 and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and the knowledge, attitudes, habits and skills necessary for the safe operation of motor vehicles.

**HISTORY: Codes, 1942, § 6232-71; Laws, 1962, ch. 341, § 1, eff from and after passage (approved May 26, 1962).**

## § 37-25-3. Establishment and maintenance of driver education and training program.

The school board of any school district maintaining a secondary school which includes any of the grades nine through twelve inclusive, may, in its discretion, establish and maintain driver education and training programs for pupils enrolled in the day secondary schools in that district.

**HISTORY: Codes, 1942, § 6232-72; Laws, 1962, ch. 341, § 2, eff from and after passage (approved May 26, 1962).**

**Cross References —** State curriculum committee, see § 37-13-9.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 419, 420, 422 et seq.

**CJS.**
78A C.J.S., Schools and School Districts §§ 1074-1076.

## § 37-25-5. Promulgation of rules and regulations; contents of program; budget; administration of program.

The State Superintendent of Public Education shall prepare and recommend to the State Board of Education, and the board shall adopt rules and regulations governing the establishment, conduct and scope of driver education and training programs in secondary schools of this state, subject to the requirements and exceptions set forth in this chapter. Said program shall be established and maintained only in accordance with such rules and regulations. The state driver education and training program in secondary schools of this state shall include a program of study for alcohol and safety education as it pertains to driver and highway safety and shall also include instruction relating to organ and tissue donation and organ and tissue donation procedures, and shall include instruction on the litter laws of the state and the responsibilities of the driver and all passengers to dispose of litter in the proper container. The state driver education and training program in secondary schools of this state shall also include a program of study, developed by the Department of Public Safety under Section 37-25-29, on how persons should properly respond when stopped by law enforcement officers.

The State Superintendent of Public Education shall prepare an administrative budget from funds made available under this chapter which budget shall be approved by the State Board of Education. It shall be the responsibility of the State Superintendent of Public Education to administer this program in accordance with rules and regulations established by the State Board of Education and to appoint the necessary supervisors of safety education and the necessary clerical personnel.

**HISTORY: Codes, 1942, § 6232-73; Laws, 1962, ch. 341, § 3; Laws, 1970, ch. 361, § 1; Laws, 1985, ch. 470, § 1; Laws, 2002, ch. 481, § 1; Laws, 2017, ch. 430, § 11, eff from and after July 1, 2017.**

**Editor's Notes —** Laws of 2017, ch. 430, § 14, provides:

"SECTION 14. Sections 1 through 12 of this act shall take effect and be in force from and after July 1, 2017. Section 13 of this act shall take effect and be in force from and after its passage [approved April 17, 2017]."

**Cross References —** Motor vehicles and traffic regulations generally, see § 63-1-1 et seq.

## § 37-25-7. Student eligibility for instruction; learners' permits.

Each school district providing driver training and education shall prescribe regulations determining who can best profit by and who shall receive instruction under this program. It is provided, however, that any student receiving instruction under this chapter shall be:

(a) Fourteen years of age or above;

(b) A regularly enrolled student in the ninth, tenth, eleventh or twelfth grade; and

(c) A full-time student in the respective secondary school.

Any driver education student under fifteen (15) years of age shall secure a learner's permit issued by the Department of Public Safety which shall be valid only while the student is under the direct supervision of a driver education instructor and is actually enrolled in an approved course of driver education which consists of thirty (30) hours of classroom and six (6) hours of dual driving instruction. The learner's permit shall expire at the end of the driver training course. The Department of Public Safety shall charge a fee of One Dollar ($1.00) for the issuance of a learner's permit.

**HISTORY: Codes, 1942, § 6232-74; Laws, 1962, ch. 341, § 4; Laws, 1994, ch. 588, § 5, eff from and after September 1, 1995.**

**Cross References —** Temporary driving permits generally, see § 63-1-21.

## § 37-25-9. Repealed.

Repealed by Laws, 2011, ch. 442, § 20, effective from and after July 1, 2011.

§ 37-25-9. [Codes, 1942, § 6232-75; Laws, 1962, ch. 341, § 5, eff from and after passage (approved May 26, 1962).]

**Editor's Notes —** Former § 37-25-9 required school districts to report annually to the superintendent of education the cost of providing and the number of students enrolled in driver education courses during the preceding year.

## § 37-25-11. Determination of cost of program.

A determination of the cost of a driver education and training program in a secondary school shall include, but by no means is limited to, the cost of the replacement of the automobile or machinery used in the instruction of pupils, the cost of the instructor's salary, the upkeep and maintenance of said automobile, and the cost of such other equipment and classroom data as may be required in a driver education and training program operated in compliance with the rules and regulations of the state board of education.

**HISTORY: Codes, 1942, § 6232-76; Laws, 1962, ch. 341, § 6, eff from and after passage (approved May 26, 1962).**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

## § 37-25-13. Allowances to districts for program.

The state superintendent of public education shall allow to each school district an amount per pupil to be determined by the state board of education, but in no case to exceed the actual cost per pupil completing the course in the driver education and training programs in that school district during the preceding fiscal year in accordance with the regulations set forth by the state board of education to the school districts for instructing pupils in driver education and training. All such funds made available for the purposes of this section shall be appropriated by the legislature in the same manner as general funds. In the event that the funds herein authorized by the legislature for the support of driver education shall exceed the funds which actually become available, each participating school district shall have its funds reduced on a pro rata basis.

No allowance shall be made under this section for the instruction of pupils in driver education and training unless the respective school district has complied with the rules and regulations as set forth by the state board of education governing the establishment, conduct and scope of driver education and training.

**HISTORY: Codes, 1942, §§ 6232-77, 6232-78, 6232-87; Laws, 1962, ch. 341, §§ 7, 8, 17; Laws, 1982, ch. 443, eff from and after July 1, 1982.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.
State superintendent of public education, see § 37-3-9, 37-3-11.

## § 37-25-15. Repealed.

Repealed by Laws, 1990, ch. 329, § 3, eff from and after October 1, 1990.
§ 37-25-15. [Codes, 1942, § 6232-79; Laws, 1962, ch. 341, § 9]

**Editor's Notes —** Former § 37-25-15 provided for assessments for driver education and training programs.

## § 37-25-17. Driver Training Penalty Assessment Fund.

Such assessments as are collected under subsections (1) and (2) of Section 99-19-73 shall be deposited in the Driver Training Penalty Assessment Fund, which fund is hereby created, to be used exclusively as provided in this chapter.

**HISTORY: Codes, 1942, § 6232-80; Laws, 1962, ch. 341, § 10; Laws, 1985, ch. 425, § 9; Laws, 1990, ch. 329, § 4, eff from and after October 1, 1990.**

**Cross References —** Deposit of portion of standard state assessment into the Driver Training Penalty Assessment Fund, see § 99-19-73.

## § 37-25-19. Repealed.

Repealed by Laws, 1990, ch. 329, § 3, eff from and after October 1, 1990.
§ 37-25-19. [Codes, 1942, § 6232-81; Laws, 1962, ch. 341, § 11; Laws, 1985, ch. 470, § 2]

**Editor's Notes —** Former § 37-25-19 related to deposit of bail to cover penalty assessment.

## § 37-25-21. Waiver of driver training penalty assessment.

In any case where any person, convicted of any violation punishable by fine and the levy of the penalty assessment specified in this chapter, is imprisoned until the fine is satisfied, the judge may waive all or any part of the penalty assessment where, in his opinion, the payment of said penalty assessment would work a hardship on the person convicted or his immediate family.

**HISTORY: Codes, 1942, § 6232-82; Laws, 1962, ch. 341, § 12, eff from and after passage (approved May 26, 1962).**

## § 37-25-23. Purchase of necessary equipment, aids and devices and materials; effect of repeal of statutory authority to purchase liability insurance.

In addition to and supplementary of all other powers authorized by law, the State Board of Education is hereby authorized and empowered to promulgate reasonable rules and regulations deemed necessary to carry out the legislative intent of Chapter 341, Laws of the 1962 Regular Session of the Mississippi Legislature, being Sections 37-25-1 et seq., Mississippi Code of 1972. The State Board of Education is authorized to purchase for cash or by lease-purchase agreement all the necessary equipment, visual and training aids and devices, and related materials required to administer this act, upon competitive public bids as required by law for public purchases.

The repeal of Chapter 387, Laws of 1968, authorizing the purchase of liability insurance upon driver training aids and devices and motor vehicles transporting the same, shall not affect any litigation or prosecutions pending on June 30, 1970, or prevent the filing of any litigation or commencement of any action accruing prior to said date.

**HISTORY: Codes, 1942, § 6232-83; Laws, 1962, ch. 341, § 13; Laws, 1968, ch. 387, § 1; Laws, 1976, ch. 364, § 1; Laws, 1985, ch. 470, § 3, eff from and after July 1, 1985.**

**Editor's Notes —** The preamble to Laws of 1976, ch. 364, reads as follows:

"WHEREAS, the Legislature enacted legislation for driver education and training in 1962; and

"WHEREAS, the Legislature in 1968 intended to allow the purchase of liability insurance for a two-year period; and

"WHEREAS, such authorization was done by amending a section dealing with purchasing and an amendment was adopted to repeal such section on June 30, 1970; and

"WHEREAS, the intent of the Legislature was to repeal only the insurance portion; Now, therefore.

"Be it enacted by the Legislature of the State of Mississippi:"

Laws of 1976, ch. 364, § 2, provides as follows:

"SECTION 2. All actions taken by the Commissioner of Public Safety and the State Board of Education since June 30, 1970, which would have been legally authorized except for the inadvertent repeal of the language appearing in Section 1 of this act by Chapter 387, Laws of the 1968 Regular Session of the Mississippi Legislature, are hereby ratified and such actions shall be presumed to have been taken in accordance with the laws of the state of Mississippi."

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

## § 37-25-25. Repealed.

Repealed by Laws, 2011, ch. 442, § 20, effective from and after July 1, 2011.

§ 37-25-25. [Codes, 1942, § 6232-84; Laws, 1960, ch. 341, § 14; Laws, 1970, ch. 362, § 1, eff from and after July 1, 1970.]

**Editor's Notes** — Former § 37-25-25 required an annual report of funds provided for and expended under authority of chapter.

## § 37-25-27. Payment of funds expended under chapter.

Funds expended under authority of this chapter shall be paid by the state treasurer out of the driver training penalty assessment fund or other funds used in administering this chapter, upon warrants issued by the state auditor of public accounts. The said auditor shall issue his warrant upon requisition signed by the proper person, officer or officers in the manner provided by law.

**HISTORY: Codes, 1942, § 6232-85; Laws, 1962, ch. 341, § 15, eff from and after passage (approved May 26, 1962).**

**Editor's Notes** — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

## § 37-25-29. Driver education program to include instruction in how a person should properly respond when stopped by law enforcement officers; curriculum to include drivers' constitutional rights.

(1) The Department of Public Safety shall develop a program of study on how persons should properly respond when stopped by law enforcement officers to be taught to students as part of the state driver education and training program and as part of a driver education program taught to students attending nonpublic schools.

(2) Any program developed by the Department of Public Safety under this section shall incorporate in that curriculum the constitutional rights that drivers have when encountering a law enforcement officer, including, but not limited to, consent to search and refusal to provide information not pertinent to the traffic stop.

**HISTORY: Laws, 2017, ch. 430, § 10, eff from and after July 1, 2017.**

**Editor's Notes** — Laws of 2017, ch. 430, § 14, provides:

"SECTION 14. Sections 1 through 12 of this act shall take effect and be in force from and after July 1, 2017. Section 13 of this act shall take effect and be in force from and after its passage [approved April 17, 2017]."

# CHAPTER 26.

# STATE COURT EDUCATION FUND

Sec.

37-26-1. Legislative purpose; applicability of chapter.
37-26-3. Court education and training cost in civil cases; funding of agency expenses; deposit of user charges and fees authorized under this section into State General Fund.
37-26-5 and 37-26-7. Repealed.
37-26-9. Collection of court education and training costs; deposits; State Court Education Fund; State Prosecutor Education Fund; State Court Constituents Fund; State Court Security Systems Fund; funding of expenses of the funds; deposit of user charges and fees authorized under this section into State General Fund.
37-26-11. Children's Advocacy Centers Fund created; purpose of Children's Advocacy Centers Fund; Mississippi Foster Care Fund created; purpose of Mississippi Foster Care Fund; funding of expenses of Children's Advocacy Centers Fund Program; deposit of user charges and fees authorized by this section into State General Fund.

## § 37-26-1. Legislative purpose; applicability of chapter.

(1) The purpose of this chapter is to provide funds for use by:

(a) The University of Mississippi Law Center in providing: (i) education and training for the courts of Mississippi and related personnel; (ii) technical assistance for the courts of Mississippi and related personnel; and (iii) current and accurate information for the Mississippi Legislature pertaining to the needs of the courts of Mississippi and related personnel; and

(b) The Attorney General of the State of Mississippi in providing: (i) education and training for district attorneys, county prosecuting attorneys and municipal prosecuting attorneys; (ii) technical assistance for district attorneys, county prosecuting attorneys and municipal prosecuting attorneys; and (iii) current and accurate information for the Mississippi Legislature pertaining to the needs of district attorneys, county prosecuting attorneys and municipal prosecuting attorneys.

(2) The provisions of this chapter are applicable to all courts of Mississippi, now or hereafter created, including, but not limited to, the supreme, circuit, chancery, county, youth, family, justice and municipal courts, other provisions to the contrary notwithstanding.

**HISTORY: Laws, 1981, ch. 368, § 1; Laws, 1985, ch. 338, § 1; Laws, 1989, ch. 471, § 1, eff from and after July 1, 1989.**

**Cross References** — State Court Constituents Fund, see § 37-26-9.

Monies from State Court Security Systems Fund allocable for security of courtrooms for courts specified in this section, see § 37-26-9.

Continuing legal education for attorneys licensed to practice law in the State of Mississippi, see Rules and Regulations for Mandatory Continuing Legal Education, Rules 1 et seq.

Continuing judicial education for Mississippi judges, see Rules and Regulations for Mandatory Continuing Judicial Education, Rules 1 et seq.

### § 37-26-3. Court education and training cost in civil cases; funding of agency expenses; deposit of user charges and fees authorized under this section into State General Fund.

(1) In addition to any other fees or costs now or as may hereafter be provided by law, there is hereby charged in all civil cases in the chancery, circuit, county, justice and municipal courts of this state a court education and training cost in the amount of Two Dollars ($2.00), except in justice court cases where the amount sued for is less than Fifteen Dollars ($15.00). Such cost shall be collected by the clerk or judicial officer from the party bringing the civil action at the time of filing and taxed as costs.

(2) From and after July 1, 2017, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(3) From and after July 1, 2017, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 1981, ch. 368, § 2; Laws, 1985, ch. 338, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 18, eff from and after passage (approved June 23, 2017).**

**Cross References** — Provision that costs are not due until suit is ended, see § 11-53-69.

Duty of justice court clerk with respect to costs charged under this section, see § 25-3-36.

Collection of court education and training costs, see § 37-26-9.

### §§ 37-26-5 and 37-26-7. Repealed.

Repealed by Laws, 1990, ch. 329, § 5, eff from and after October 1, 1990.

§ 37-26-5. [Laws, 1981, ch. 368, § 3; Laws, 1985, ch. 338, § 3]

§ 37-26-7. [Laws, 1981, ch. 368, § 4; Laws, 1989, ch. 471, § 3]

**Editor's Notes** — Former § 37-26-5 related to court education and training cost imposed upon each conviction in criminal cases.

Former § 37-26-7 required cost for court education and training to be deposited with cash bail, and treated the disposition of funds upon forfeiture of bail.

### § 37-26-9. Collection of court education and training costs; deposits; State Court Education Fund; State Prosecutor Education Fund; State Court Constituents Fund; State Court Security Systems Fund; funding of expenses of the funds; deposit of user charges and fees authorized under this section into State General Fund.

(1) It shall be the duty of the clerk of any court to promptly collect the

costs imposed pursuant to the provisions of Section 37-26-3. In all cases the clerk shall monthly deposit all such costs so collected with the State Treasurer either directly or by other appropriate procedures. All such deposits shall be clearly marked for the State Court Education Fund and the State Prosecutor Education Fund. Upon receipt of such deposits, the State Treasurer shall credit seventy-five percent (75%) of any amounts so deposited to the State Court Education Fund created pursuant to subsection (2) of this section, and shall credit the remaining twenty-five percent (25%) of any amounts so deposited to the State Prosecutor Education Fund created pursuant to subsection (3) of this section.

(2) Such assessments as are collected under Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "State Court Education Fund." Monies deposited in such fund shall be expended by the Board of Trustees of State Institutions of Higher Learning as authorized and appropriated by the Legislature to defray the cost of providing: (i) education and training for the courts of Mississippi and related personnel; (ii) technical assistance for the courts of Mississippi and related personnel; and (iii) current and accurate information for the Mississippi Legislature pertaining to the needs of the courts of Mississippi and related personnel.

(3) Such assessments as are collected under Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "State Prosecutor Education Fund." Monies deposited in such fund shall be expended by the Attorney General of the State of Mississippi as authorized and appropriated by the Legislature to defray the cost of providing: (i) education and training for district attorneys, county prosecuting attorneys and municipal prosecuting attorneys; (ii) technical assistance for district attorneys, county prosecuting attorneys and municipal prosecuting attorneys; and (iii) current and accurate information for the Mississippi Legislature pertaining to the needs of district attorneys, county prosecuting attorneys and municipal prosecuting attorneys.

(4) A supplemental fund is hereby created in the State Treasury and designated the State Court Constituents Fund. Monies deposited in such fund shall be for the education and training of judges and related court personnel other than those specified in Section 37-26-1(b). In addition to any other fees or costs now or as may hereafter be provided by law, there is hereby charged in all civil cases in the chancery, circuit, county, justice and municipal courts of this state a supplemental court education and training cost in the amount of Fifty Cents (50¢), except in justice court cases where the amount sued for is less than Fifteen Dollars ($15.00); and in all criminal cases in the circuit, county, justice and municipal courts of this state, except in cases where the fine is less than Ten Dollars ($10.00). Such costs shall be charged and collected as provided by Sections 37-26-3 and 37-26-5.

After the transfer to the State Prosecutor Education Fund of twenty-five percent (25%) of the money provided for in subsection (1) of this section, there shall then be transferred into the State Court Education Fund the money on deposit in the State Court Constituents Fund.

(5) A special fund is created in the State Treasury and designated the "State Court Security Systems Fund." Monies deposited in such fund shall be expended for general courtroom security as well as the maintenance and operation of security surveillance and detection devices for the courtrooms of each court of the State of Mississippi specified in Section 37-26-1(2). The Administrative Office of Courts shall conduct a study to assess and determine the security needs of the courts and is authorized to expend monies in the fund for the purposes of the fund as authorized and appropriated by the Legislature.

(6) From and after July 1, 2017, the expenses of the State Court Education Fund, the State Prosecutors Education Fund, the State Court Constituents Fund and the State Court Security Systems Fund shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(7) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 1981, ch. 368, § 5; Laws, 1985, ch. 338, § 4; Laws, 1989, ch. 471, § 2; Laws, 1990, ch. 329, § 6; Laws, 1991, ch. 512, § 1; Laws, 1993, ch. 545, § 1; Laws, 2017, 1st Ex Sess, ch. 7, § 19, eff from and after passage (approved June 23, 2017).**

**Editor's Notes —** Section 37-26-5 referred to in (4) was repealed by Laws of 1990, ch. 329, § 5 effective from and after October 1, 1990.

**Cross References —** Court education and training costs, see § 37-26-3.

Deposit of portion of standard state assessment into the State Court Education Fund and the State Prosecutor Education Fund, see § 99-19-73.

## § 37-26-11. Children's Advocacy Centers Fund created; purpose of Children's Advocacy Centers Fund; Mississippi Foster Care Fund created; purpose of Mississippi Foster Care Fund; funding of expenses of Children's Advocacy Centers Fund Program; deposit of user charges and fees authorized by this section into State General Fund.

(1) There is created in the State Treasury a special fund to be known as the Children's Advocacy Centers Fund, which shall be administered by the Office of the Attorney General. The purpose of the fund shall be for training forensic interviewers in child abuse and child sexual abuse cases, training law enforcement officers and prosecutors about child abuse cases, expanding the number of Children's Advocacy Centers of Mississippi to underserved areas, and other related purposes. Monies in the fund shall be expended by the Attorney General, upon appropriation by the Legislature. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Children's Advocacy Centers of Mississippi;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(2) There is created in the State Treasury a special fund to be known as the Mississippi Foster Care Fund, which shall be administered by the Department of Child Protection Services. The purpose of the fund shall be for supporting the services directly provided to foster families and foster children by programs, persons or entities pursuant to contracts and grants that comply with Mississippi law, and for other related purposes. Monies in the fund shall be expended by the department, upon appropriation by the Legislature, only for the purposes stated in this subsection, and only in such amounts as then exist in the fund. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Mississippi Foster Care Fund;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73 for the Mississippi Foster Care Fund, ninety percent (90%) of which shall be used directly for supporting the services directly provided to foster families and foster children by programs, persons or entities pursuant to contracts and grants that comply with Mississippi law, and no more than ten percent (10%) of which shall be used for administrative purposes;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(3) From and after July 1, 2016, the expenses of the Children's Advocacy Centers Fund Program shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2012, ch. 554, § 3; Laws, 2017, 1st Ex Sess, ch. 7, § 20, eff from and after passage (approved June 23, 2017); Laws, 2019, ch. 412, § 1, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 2012, ch. 554, § 6 provides:

"SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:

"University of Mississippi Medical Center for the Children's Justice Center ......... $750,000.00

"Board of Trustees of State Institutions of
Higher Learning for the DuBard School

| | |
|---|---|
| for Language Disorders | $300,000.00 |
| "Attorney General's office for the Children's Advocacy Centers of Mississippi | $650,000.00 |
| "Attorney General's office for the Motorcycle Officers Training Program | $50,000.00 |

"The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Adminstration in a manner consistent with the escalation of federal funds."

**Amendment Notes —** The 2019 amendment added (2) and redesignated former (2) and (3) as (3) and (4).

**Cross References —** Imposition of state assessment in addition to all court imposed fines or other penalties for violations of § 41-29-139 for the Mississippi Foster Care Fund, see § 99-19-73.

# CHAPTER 27.

# AGRICULTURAL HIGH SCHOOLS

Sec.
37-27-1. Establishing county agricultural high schools.
37-27-3. Tax levy for support and maintenance of school; election.
37-27-5. Levy of tax for building, repair, and equipment of school, and purchase of lands or buildings.
37-27-6. Tax to retire debt service on agricultural high school bonds.
37-27-7. Appointment of trustees.
37-27-9. Joint schools may be established by two or more counties.
37-27-11. Trustees of joint agricultural high schools; levy of taxes.
37-27-13. Ownership of joint schools.
37-27-15. General powers and duties of trustees; compensation.
37-27-17. Inspection of school by state superintendent of public education; state funds.
37-27-19. Repealed.
37-27-21. Legislature shall make appropriations.
37-27-23. Trustees shall be sole judges of eligibility of applicants.
37-27-25. Trustees shall make detailed statements of receipts and disbursements.
37-27-27. Trustees of certain vocational-agricultural high schools may contract to supply water to municipality.
37-27-29. Oil, gas and mineral leases.
37-27-31. Lease of school buildings, equipment and lands.
37-27-33. Trustees may lease facilities for industrial training of students.
37-27-35. Trustees may acquire private educational institution outside of county.
37-27-37. Establishment of junior college in connection with agricultural high school outside county.
37-27-39. Trustees may exchange certain lands.
37-27-41. Agricultural high schools and public schools may be authorized to acquire each other's property.
37-27-43. Trustees may sell property not needed for school purposes.
37-27-45. Resolution required for sale.
37-27-47. Advertising of sale; conduct of sale.
37-27-49. All sales to be for cash; disposition of proceeds.
37-27-51. Trustees may contract with school districts for attendance of pupils at agricultural high school.
37-27-53. Pupils entitled to transportation.
37-27-55. Pupils reported for allocation of minimum education funds and building funds.
37-27-57. Payment of additional or supplemental expenses.
37-27-59. Applicability of laws.
37-27-61. County superintendent may provide for attendance out of the county.
37-27-63. Municipalities and municipal separate school districts may issue bonds to support agricultural high schools.
37-27-65. Boards of supervisors may issue bonds for agricultural high schools, and agricultural high school-junior colleges.
37-27-67. Election on issuance of bonds by boards of supervisors.
37-27-69. Agricultural high school may borrow not to exceed $50,000 for housing facilities.
37-27-71. Declaration of intention to borrow; issuance of notes; repayment.
37-27-73. Board of trustees to fix and collect fees, rents and charges; disposition of monies; limitations.
37-27-75. Foregoing sections as cumulative.

Sec.
37-27-77. Purchase of bus for benefit of agricultural high schools in certain counties.
37-27-79. Report and recommendations for consolidation of agricultural high schools; abolition of agricultural high school pursuant to petition; election.
37-27-80. Hinds Agriculture High School discontinued; disposal of property; diplomas.
37-27-81. Sale of school property upon abolition of school pursuant to petition and election; disposition of proceeds.
37-27-83. Disposal of school property when school is discontinued.
37-27-85. Donated lands may be reconveyed when school is discontinued.
37-27-87. Transfer of funds when school is discontinued.
37-27-89. Distribution and use of funds when school is discontinued.
37-27-91. Abolition of school not operated in four years.
37-27-93. Application to convert Coahoma Agricultural High School to Early College High School; transfer upon approval; transfer of personal property; diplomas.
37-27-95. Application to convert Coahoma Agricultural High School to Early College High School; closure upon disapproval; disposition of property; diplomas.

## § 37-27-1. Establishing county agricultural high schools.

The county board of education in each county in the state is hereby authorized and empowered to establish not more than two agricultural high schools in the county, and determine their location, in which instruction shall be given in high school branches, theoretical and practical agriculture, domestic science, and in such other branches as the board may hereinafter provide for and make a part of the curriculum, subject to review and correction by the state board of education. If only one school be established at first, the county board of education shall have power at any subsequent time to establish an additional school whenever the necessity for the same shall arise.

**HISTORY: Codes, 1930, § 6674; 1942, § 6454; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Powers of board of trustees.
3. Jurisdiction.
4. Miscellaneous.

**1. In general.**
Statutes relating to county agricultural high schools held to disclose purpose that tuition should be free to students. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

**2. Powers of board of trustees.**
Board of trustees of county agricultural high school possess only powers expressly conferred by statutes, or necessarily im-

plied. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

**3. Jurisdiction.**

Under statute creating and regulating agricultural high schools-junior colleges and providing for support from means other than common school fund, chancery court had jurisdiction to validate notes issued for building program of such a school, since it was "school district" within meaning of statute governing court's jurisdiction in such matters. Wyatt v. Harrison-Stone-Jackson Agricultural High School-Junior College, 177 Miss. 13, 170 So. 526, 1936 Miss. LEXIS 238 (Miss. 1936); Humphreys v. Hinds County Agricultural, etc., Junior College, 177 Miss. 1, 170 So. 530, 1936 Miss. LEXIS 239 (Miss. 1936).

**4. Miscellaneous.**

Plan for desegregating the schools of Coahoma County, Mississippi, would be adopted which would assign students in the first eight grades to neighborhood schools, after which the district would be zoned for the assignment of students in grades 9 through 12 to the county high school operated by the school district, and to the county agricultural high school operated by the junior college district. Taylor v. Coahoma County School Dist., 330 F. Supp. 174, 1970 U.S. Dist. LEXIS 11054 (N.D. Miss. 1970), aff'd, 444 F.2d 221, 1971 U.S. App. LEXIS 9525 (5th Cir. Miss. 1971).

## § 37-27-3. Tax levy for support and maintenance of school; election.

The board of supervisors of any county where an agricultural high school shall have been established by the county board of education, shall levy on the taxable property in the county at the time the annual tax levy is made, for the support and maintenance of said school. In case there are two (2) agricultural high schools in any county, the board shall levy a separate tax for the support of each school, and the taxes, when collected, shall only be used for the support and maintenance of the particular school for which the tax is levied. The tax levy for agricultural high school purposes for any year shall not be less than the equivalent uniform minimum school district ad valorem tax levy for agricultural high school support as certified by the State Board of Education.

Within twenty (20) days after the levy has been made twenty percent (20%) of the qualified electors of said county may file with the clerk of the board of supervisors a petition asking that the tax for the support of either one (1) or both agricultural high schools be not levied. Thereupon, the question shall be submitted to an election of the qualified electors of the county within thirty (30) days after the next meeting of the board of supervisors after the filing of the petition, at which election said electors may vote against the tax levy for the support for either one (1) or both schools. Should the majority of the votes cast be against the tax levied for the support of one (1) or both schools, then the levy of the board for the support of that school or both schools, as the case may be, shall be null and void, and the tax collector shall refuse to collect such tax so voted against. Should a majority of the votes be for the tax levied in support of either or both schools, then the tax collector shall proceed to collect the tax so authorized as all other taxes are collected, receiving the lawful commission of such collections. The tax collected shall be deposited with the county depository, to be paid out by him on the order of the board of trustees for the high school or high schools.

When a majority of the votes be for the tax levied in support of either or both schools, or if the school be established and the tax levied without an election, then another election shall not be held for the purpose of voting against the tax levied within a period of four (4) years from date of said election. In no case shall the tax levied for an agricultural high school, which maintains an average high school boarding dormitory patronage of thirty-five (35) pupils, resident of that county, be submitted to an election.

**HISTORY: Codes, 1930, § 6675; 1942, § 6455; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1991, ch. 497, § 3, eff from and after July 1, 1991.**

**Cross References** — Homestead exemptions, see § 27-33-3.
County ad valorem taxes, see § 27-39-317.
Levy for schools generally, see § 37-57-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 65 et seq.

**CJS.**
78A C.J.S., Schools and School Districts § 1082 et seq.

## § 37-27-5. Levy of tax for building, repair, and equipment of school, and purchase of lands or buildings.

Boards of supervisors are hereby authorized, in their discretion, to levy on the taxable property in the county at the time the annual tax levy is made, a tax for the building, repair, and equipment of agricultural high schools, as well as for the purchase of suitable lands or buildings, or both, or for the payment of debts heretofore created for any of said purposes, not to exceed three mills. Within twenty (20) days after levy has been made, twenty percent (20%) of the qualified electors of said county may file with the clerk of the board of supervisors a petition asking that the tax be not levied; thereupon, the question shall be submitted to an election of the people, which election shall be decisive to the levy for that year only. The maximum levy for maintenance purposes as fixed by the law for the agricultural high school, shall not be deemed a limitation on the tax levy for the building, repair, and equipment of agricultural high schools hereinbefore mentioned, nor the levy under this section, a limitation on the levy for maintenance purposes.

**HISTORY: Codes, 1930, § 6681; 1942, § 6461; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

**Cross References** — County ad valorem taxes, see § 27-39-317.
Tax to retire debt service on agricultural high school bonds, see § 37-27-6.
Levy for schools generally, see § 37-57-1 et seq.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 65 et seq.

**CJS.**
78A C.J.S., Schools and School Districts § 1082 et seq.

## § 37-27-6. Tax to retire debt service on agricultural high school bonds.

The board of supervisors of any county wherein the control, operation and maintenance of the agricultural high school has been transferred to the county board of education under provisions of Section 37-29-272, is hereby authorized, in its discretion, upon request in writing of the board of trustees of the community college district in which such county is located, to levy on the taxable property in the county at the time the annual tax levy is made, a tax under Section 37-27-5 as is necessary for the retirement of debt service on bonds heretofore issued for the building, repair and equipment of such agricultural high school.

**HISTORY: Laws, 1994, ch. 581, § 51, eff from and after July 1, 1994.**

**Cross References —** County ad valorem taxes, see § 27-39-317.
Levy for schools generally, see § 37-57-1 et seq.

## § 37-27-7. Appointment of trustees.

The government and control of county agricultural high schools in any county shall be vested in a board of six trustees, one from each supervisor's district, three of whom shall be elected by the county board of supervisors and two of whom shall be elected by the county board of education. The county superintendent of education, who shall be the secretary of the board and whose term shall be his or her tenure of office, shall be the sixth member and shall represent the county at large. All regular terms shall be for a term of four years.

**HISTORY: Codes, 1930, § 6676; 1942, § 6456; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1936, 2nd Ex Sess ch. 11; Laws, 1968, ch. 405, § 1, eff from and after July 1, 1968.**

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 73.

**CJS.**
78 C.J.S., Schools and School Districts §§ 213, 214.

## § 37-27-9. Joint schools may be established by two or more counties.

In case the county board of education of two or more counties shall so decide, two or more counties may unite in establishing a joint agricultural high school, joint agricultural high school-junior college or two schools. The county boards of education of the two or more counties shall meet in joint session to determine the location of the school or schools, and if no place can be agreed upon by a majority of the joint boards for either school, the two places receiving the greatest number of votes shall be certified by the boards to the state board of education, which board shall select one of them as a site for the school.

In case any county not contributing to the support of an agricultural high school or agricultural high school-junior college desires to co-operate in the maintenance of such a school or schools already established by some other county or counties, and receive therefrom the full privileges and benefits of such an institution, such desire shall be made a matter of record on the minutes of the county board of education of the said county by a majority vote of said board. After such action by the county board of education, the board of supervisors of said county may with the consent of the trustees of the school or schools make a levy for the support of said agricultural high school or agricultural high school-junior college. After such levy has been made, the county shall, so far as the law is concerned, have all the privileges, rights, and duties concerning the operation of said school in every respect as the county or counties originally establishing said agricultural high school or agricultural high school-junior college.

**HISTORY: Codes, 1930, § 6677; 1942, § 6457; Laws, 1924, ch. 283; Laws, 1928, ch. 70; Laws, 1930, ch. 278.**

**Cross References —** Joint operation of schools by adjoining school districts, see § 37-7-401 et seq.

Jointly operated regional vocational education center, see §§ 37-31-71 et seq.

## § 37-27-11. Trustees of joint agricultural high schools; levy of taxes.

The government of an agricultural high school established by two counties shall be vested in the board of trustees, six to be selected by each county in the same manner designated in Section 37-27-7 and the thirteenth to be chosen by the twelve so selected. In case no one receives a majority of all the votes of the twelve members the thirteenth trustee shall be selected by lot from the two highest in voting. The terms of the six trustees from each of the said counties shall be as provided in Section 37-27-7, and the thirteenth trustee shall serve for a term of four years. The government of an agricultural high school established by more than two counties shall be vested in a board of trustees composed of six trustees from each county selected in the manner provided by law. A majority of the board of trustees of an agricultural high school shall constitute a quorum. A county or counties co-operating with an established agricultural high school may be represented on the board of trustees of such school by the county superintendent of education and one trustee chosen by the board of supervisors of such county.

In levying the taxes provided by law, each county shall act independently, but if one county joining another or others in establishing a school, shall decline to levy the tax, the other county or counties may nevertheless do so, in which event the joint plan shall thereby be abandoned in so far as the county failing to levy the tax is concerned, and the county or counties levying the tax may proceed in the management and control of the school. In case two or more counties join in establishing or maintaining a joint school, and each county levies a special tax as provided by law, the tax collector of each county shall collect the tax in his county and pay the same into the county depository of his county. In paying the expenses of either school, the trustees shall draw on the funds of each county provided for that school, equitably as near as may be in proportion to the amount of tax collected for that school by each county; if no tax is levied, the trustees shall draw on any fund in the depository of the respective counties provided by law for the support of that school in proportion to the number of educable children attending such school for each county.

**HISTORY: Codes, 1930, § 6678; 1942, § 6458; Laws, 1924, ch. 283; Laws, 1930, ch 278.**

**Cross References** — Joint operation of schools by adjoining school districts generally, see § 37-7-401 et seq.

## § 37-27-13. Ownership of joint schools.

Any county which has contributed or may hereafter contribute funds for the purchase of lands or for the construction of buildings for an agricultural high school or schools in another county, shall be deemed to be the owner of an interest in said agricultural high school in the proportion that the amount contributed by such county bears to the whole expense of the purchase of said lands or the construction of said buildings.

**HISTORY: Codes, 1930, § 6679; 1942, § 6459; Laws, 1928, ch. 25; Laws, 1930, ch. 278.**

**Cross References** — Joint operation of schools by adjoining school districts generally, see § 37-7-401 et seq.

## § 37-27-15. General powers and duties of trustees; compensation.

The trustees of agricultural high schools shall have control of the property, elect and fix salaries of all teachers of the school, and shall have full power to do all things necessary to the successful operation of said school. When a common school is taught in connection with an agricultural high school, the election of teachers for the common school department shall be made by the common school trustees in the same manner as is required of other common school trustees.

The trustees may, where in their judgment it would be beneficial to the school, pay the traveling expenses, hotel bills, and other necessary expenses of the executive head of the school in promoting the school's general welfare, provided that such traveling expenses, hotel bills, and other necessary expenses shall not exceed Nine Hundred Dollars ($900.00) annually.

Each member of the board of trustees, the county superintendent excepted, shall receive his actual expenses while on duty, provided that said expenses do not exceed Twelve Dollars and Fifty Cents ($12.50) per day, to be paid out of the county agricultural high school fund on receipt of an itemized statement issued to the county superintendent.

The board of trustees of a school established or maintained by the joint action of two or more counties, shall have all the power and discharge all the duties appertaining to boards of trustees of schools where only one county is interested.

**HISTORY: Codes, 1930, §§ 6676, 6678; 1942, §§ 6456, 6458; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1936, 2nd Ex Sess, ch. 11; Laws, 1968, ch. 405, § 1, eff from and after July 1, 1968.**

**Cross References —** Powers, authority, and duties of boards of trustees of school districts generally, see § 37-7-301.

Joint operation of schools by adjoining school districts generally, see § 37-7-401 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Particular powers of trustees.

**1. In general.**

General language of statutory provision defining powers of board of trustees of county agricultural high school does not confer unlimited and unregulated discretion. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

Board of trustees of county agricultural high school possesses only powers expressly conferred by statute, or necessarily implied. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

**2. Particular powers of trustees.**

Board of trustees of county agricultural high school held without power to make payment of athletic, literary, and library fees condition precedent to right of student to enter school. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

Under prior law trustees of agricultural high school held to have power to require pupils to wear uniform while attending school and visiting public places within 5 miles thereof. Jones v. Day, 127 Miss. 136, 89 So. 906, 1921 Miss. LEXIS 200 (Miss. 1921).

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools § 84.

**CJS.**

78 C.J.S., Schools and School Districts §§ 294 et seq.

### § 37-27-17. Inspection of school by state superintendent of public education; state funds.

When the state superintendent of public education shall have received from the county superintendent of education of any county a statement showing that an agricultural high school has been located by the county board of education, that the land has been acquired, that necessary levy has been made by the board of supervisors, and that suitable buildings have been erected, including adequate boarding facilities, then the state superintendent shall visit such school and, after a thorough inspection thereof, make a full and complete report of said inspection to the state board of education. Should it appear to the state board of education that it would be to the interest of the state, and funds have been appropriated therefor, the board shall draw an order on the state auditor in favor of the county depository or depositories for the sum of One Thousand Dollars ($1,000.00) for each county supporting an agricultural high school, for the use of the trustees of the said high school or schools. The auditor shall issue his warrant annually on the depository for this amount, but not more than One Thousand Dollars ($1,000.00) for each county supporting an agricultural high school shall be paid to any one (1) school in one (1) year for agricultural high school purposes, except as hereinafter provided.

All schools failing to make an average attendance of forty (40) or more students for the previous session shall receive only One Thousand Dollars ($1,000.00), as provided above.

After Twenty-five Thousand Dollars ($25,000) each year has been set aside as an equalizing fund to be disbursed by the state board of education where the need is greatest, which amount shall be distributed without reference to attendance, the remainder shall be distributed on the per capita basis of the average boarding attendance of the previous session. However, no school shall receive more than Five Thousand Five Hundred Dollars ($5,500.00) a year of the remainder.

Any consolidated school carrying four (4) years' accredited high school work, doing work in vocational agriculture and vocational home economics, as defined by the director of the division of vocational education, shall receive the following amounts under conditions named:

Schools having enrolled not less than twenty (20) all-day pupils in these classes shall receive Two Hundred and Fifty Dollars ($250.00) annually.

Schools having enrolled not less than thirty (30) all-day pupils in these classes shall receive Five Hundred Dollars ($500.00) annually.

Schools having enrolled not less than forty (40) all-day pupils in these classes shall receive Seven Hundred Fifty Dollars ($750.00) annually.

No aid shall be given an agricultural high school until the state board of education has approved the plans for the building and course of study for the same. The appropriations from the state treasury shall be made in such manner as to comply with the law, but the state aid may be withdrawn at any time, when the state board of education finds that a school is not being legally conducted for the purposes for which established.

**HISTORY: Codes, 1930, § 6680; 1942, § 6460; Laws, 1926, ch. 326; Laws, 1928, ch. 293; Laws, 1930, ch. 278; Laws, 1938, ch. 218.**

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear. Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

**Cross References —** Duties of state superintendent of public education generally, see § 37-3-11.

Director of Division of Vocational and Technical Education responsible for vocational and technical education, including agriculture and home economics, see § 37-3-25.

### JUDICIAL DECISIONS

**1. In general.**

Chancery court had jurisdiction to validate notes issued for building program of agricultural high school-junior college, since it was a "school district." Wyatt v. Harrison-Stone-Jackson Agricultural High School-Junior College, 177 Miss. 13, 170 So. 526, 1936 Miss. LEXIS 238 (Miss. 1936); Humphreys v. Hinds County Agricultural, etc., Junior College, 177 Miss. 1, 170 So. 530, 1936 Miss. LEXIS 239 (Miss. 1936).

## § 37-27-19. Repealed.

Repealed by Laws of 2012, ch. 348, § 1, effective from and after July 1, 2012.

§ 37-27-19. [Codes, 1930, § 6680; 1942, § 6460; Laws, 1926, ch. 326; Laws, 1928, ch. 293; Laws, 1930, ch. 278; Laws, 1938, ch. 218.]

**Editor's Notes —** Former § 37-27-19 provided standards schools had to achieve in order to be included on the list of approved agricultural high schools by the state board of education.

## § 37-27-21. Legislature shall make appropriations.

It shall be the duty of the legislature to make appropriations to meet the conditions of this chapter.

**HISTORY: Codes, 1930, § 6684; 1942, § 6464; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

## § 37-27-23. Trustees shall be sole judges of eligibility of applicants.

The board of trustees of each county shall be the judges of the eligibility of all applicants for admission to any agricultural high school in the county. They shall not permit any applicant to become a student therein, when in the opinion of the said trustees the moral and mental characteristics of the applicant are such as would prove detrimental to the good morals of the institution.

**HISTORY: Codes, 1930, § 6683; 1942, § 6463; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Powers of trustees.
3. Tuition and fees.

**1. In general.**

Where facilities of county agricultural high school are sufficient, students having required educational foundation, if of good moral character, should be received. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

**2. Powers of trustees.**

Board of trustees of county agricultural high school possess only powers expressly conferred by statutes, or necessarily implied. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

**3. Tuition and fees.**

Statutes relating to county agricultural high schools held to disclose purpose that tuition should be free to students. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

Board of trustees of county agricultural high school held without power to make payment of athletic, literary, and library fees condition precedent to right of student to enter school. Morris v. Vandiver, 164 Miss. 476, 145 So. 228, 1933 Miss. LEXIS 233 (Miss. 1933).

## RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 277 et seq.

**CJS.**

78A C.J.S., Schools and School Districts §§ 987, 991.

## § 37-27-25. Trustees shall make detailed statements of receipts and disbursements.

The board of trustees of agricultural high schools shall make detailed statements of receipts and disbursements to the board or boards of supervisors and the county superintendent or superintendents of education annually on the first Monday of July. The county superintendent of education shall transmit to the state superintendent of public education, a copy of said detailed statement which shall be embodied in his annual report to the legislature.

**HISTORY: Codes, 1930, § 6682; 1942, § 6462; Laws, 1924, ch 283; Laws, 1930, ch. 278; Laws, 1970, ch. 377, § 1, eff from and after July 1, 1970.**

## § 37-27-27. Trustees of certain vocational-agricultural high schools may contract to supply water to municipality.

The board of trustees of any vocational-agricultural high school located within a municipality having a population of less than seven hundred, and not having a municipal water system, may, in its discretion, enter into a contract and agreement with the governing authority to supply said municipality with water from the water system owned by such vocational-agricultural high school.

Such contract or agreement shall be entered into by and between the board of trustees of such vocational-agricultural high school and the governing authority of such municipality. The same shall be made a matter of record on the minutes of each, and shall be upon such terms and conditions as may be agreed upon by and between the said board of trustees and the governing authority of such municipality.

**HISTORY: Codes, 1942, § 6456.5; Laws, 1948, ch. 299, § 1.**

## § 37-27-29. Oil, gas and mineral leases.

The trustees of agricultural high schools by and with the consent of the board of supervisors of the county or counties affected are hereby authorized to lease all or any part of the lands belonging to them for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas and all other minerals, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon to produce, save, take care of, treat, transport and dispose of and own said products, and housing its employees, and to collect royalties from such leases. Any lease of such land shall contain a provision to retain at least a one-eighth interest in the royalties and proceeds and receipts of any oil, gas and/or minerals produced thereon for the benefit of such school.

Any funds arising from or collected under this section shall be deposited in the county depository of the county in which said school is located to the credit of said agricultural high school. Such funds may be disbursed as other funds belonging to said institution.

**HISTORY: Codes, 1942, § 6485; Laws, 1932, ch. 164; Laws, 1946, ch. 304, § 1.**

**Cross References —** Oil, gas and mineral leases by county boards of supervisors of sixteenth section and lieu lands, see § 29-3-99.

Oil, gas and mineral leases by boards of trustees of school districts of district lands, see § 37-7-305.

Agreements for cooperative development and operation of common accumulations of oil and gas under leases by public officers, see § 53-3-51.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 117.

**CJS.**
78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761, 763.

## § 37-27-31. Lease of school buildings, equipment and lands.

The board of trustees of any agricultural high school is hereby authorized to lease the buildings and equipment thereof to any responsible individual for the purpose of carrying on a private school when there are no funds available for running said institution, and to lease the lands of said institution to some responsible person for agricultural purposes. Said leases shall not extend for any greater length of time than a period of three years from date of granting said lease.

**HISTORY: Codes, 1942, § 6484; Laws, 1932, ch. 106.**

**Cross References** — Trustees may lease facilities for industrial training of students, see § 37-27-33.

Similar provisions authorizing leases of buildings and equipment of junior colleges, see § 37-29-77.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 117.

**CJS.**
78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761, 763, 775, 776, 787.

## § 37-27-33. Trustees may lease facilities for industrial training of students.

If an agricultural high school has established or hereafter establishes facilities for the industrial training of students and it appears to the board of trustees that the training of students will be facilitated by the continuous operation of such facilities, the trustees are authorized to lease to individual firms or corporations such facilities or a part thereof upon such terms and conditions as the trustees may approve, provided that all students desirous of securing training of the kind offered by the lessee shall be given a reasonable opportunity therefor.

**HISTORY: Codes, 1930, § 6676; 1942, § 6456; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1936, 2nd Ex Sess, ch. 11; Laws, 1968, ch. 405, § 1, eff from and after July 1, 1968.**

**Cross References** — Lease of school buildings, equipment and lands, see § 37-27-31.

Similar provisions authorizing such leases of industrial training facilities of junior colleges, see § 37-29-175.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools § 117.

**CJS.**
78A C.J.S., Schools and School Districts

§§ 737, 738, 741, 742, 761, 763, 775, 776, 787.

### § 37-27-35. Trustees may acquire private educational institution outside of county.

The trustees of an agricultural high school in one county may acquire by donation the plant (including lands, buildings, and equipment) of a privately owned educational institution situated on land outside of but adjoining the county line, and thereon and therewith maintain and operate an agricultural high school as though it were wholly located in the county receiving the donation. All laws governing the maintenance and operation of agricultural high schools shall apply to the operation, management and control of said high school as if it were situated within the county operating it.

**HISTORY: Codes, 1942, § 6473-01; Laws, 1946, ch. 239, § 1.**

**Cross References** — Authority for agricultural high schools and public schools to acquire each other's property, see § 37-27-41.

### § 37-27-37. Establishment of junior college in connection with agricultural high school outside county.

Any county now or hereafter maintaining and operating an agricultural high school outside of said county, pursuant to the authority of Section 37-27-35, is hereby authorized to establish, maintain, and operate a junior college in connection with such agricultural high school. All laws of the state governing the establishment, maintenance, and operation of junior colleges shall apply to the establishment, operation, eligibility for support funds, management, and control of such junior college as if it were situated within the county operating it. Such junior college may be established outside of, but adjoining, the territorial boundaries of the junior college district for which it is established.

This section is additional and cumulative to all existing laws relating to the establishment, maintenance, and operation of junior colleges and shall be entitled to a liberal construction for the accomplishment of its remedial purposes.

**HISTORY: Codes, 1942, § 6473-02; Laws, 1954, Ex Sess, ch. 26, §§ 1, 2.**

**Cross References** — Authority for establishment and maintenance of state junior college system, see § 37-29-1.

### § 37-27-39. Trustees may exchange certain lands.

The boards of trustees of any agricultural high school in the state, with the approval of the board of supervisors and the county board of education, are hereby authorized and empowered to exchange the lands belonging to said schools, except the lands on which the school buildings are located, for other lands. The deed or deeds of conveyance shall be executed by the president or chairman and the secretary of the board of trustees pursuant to an order of the board of trustees entered on its minutes, and pursuant to an order of approval by the board of supervisors and county board of education entered on their minutes, and which, when so executed, shall be fully effective to convey title to said property. The orders of the respective boards shall fully describe the property to be conveyed by said school and also, the property to be received in exchange for same.

**HISTORY: Codes, 1930, § 6693; 1942, § 6474; Laws, 1928, ch. 215; Laws, 1930, ch. 278.**

**Cross References —** Exchange of school property generally, see § 37-7-431 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
16A Am. Jur. Legal Forms 2d, Schools §§ 229:102 et seq. (acquisition of and addition to school property).

**CJS.**
78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761, 763.

## § 37-27-41. Agricultural high schools and public schools may be authorized to acquire each other's property.

The board of supervisors of any county may authorize the sale of any undivided interest in any property owned by an agricultural high school and used for school purposes to any public school, and the board of supervisors may authorize the sale of an undivided interest in any public school property used for school purposes to an agricultural high school. Before an order authorizing such sale shall be effected, the boards of trustees of each of such schools shall agree in writing on the terms of such sale, and shall set out in full the extent of the rights of use and occupancy of the school and grounds each of said schools is to enjoy, and shall also agree upon the control, management and preservation of such premises. Before, however, any such contract with reference to the use, occupancy, management and control of such school buildings and grounds to be used for joint purposes is final it shall receive the approval of the county board of education.

**HISTORY: Codes, 1930, § 6692; 1942, § 6473; Laws, 1924, ch. 289; Laws, 1930, ch. 278.**

**Cross References —** Acquisition by boards of trustees of agricultural high schools of private educational institutions outside of county, see § 37-27-35.

### RESEARCH REFERENCES

**Am. Jur.**
16A Am. Jur. Legal Forms 2d, Schools §§ 229:102 et seq. (acquisition of and addition to school property).

**CJS.**
78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761, 763, 775, 776, 787.

## § 37-27-43. Trustees may sell property not needed for school purposes.

When any agricultural high school shall own any land, buildings or other property that is not used for school or related school purposes and not needed in the operation of the school, the board of trustees of such agricultural high school may sell and convey such land, buildings or other property in the manner provided in Sections 37-27-45 through 37-27-49.

**HISTORY: Codes, 1942, § 6328-41; Laws, 1953, Ex Sess, ch. 28, § 1; Laws, 1960, ch. 305.**

**Cross References —** Sale of school district property not used for school purposes, see § 37-7-451 et seq.

Execution of quitclaim deeds and disclaimers of title by school district boards of trustees in cases where questions of title have arisen with reference to sale procedure and the like, see § 89-1-25.

### RESEARCH REFERENCES

**CJS.**
78A C.J.S., Schools and School Districts §§ 737, 738, 741, 742, 761, 763, 775, 776, 787.

## § 37-27-45. Resolution required for sale.

When the board of trustees of any such agricultural high school shall desire to sell any such property as is provided for in Section 37-27-43, it shall pass a resolution declaring that such property is not needed nor used for school purposes and shall direct, in such resolution, that same be advertised for sale upon competitive bids in the manner provided for in Section 37-27-47.

**HISTORY: Codes, 1942, § 6328-42; Laws, 1953, Ex Sess, ch. 28, § 2, eff from and after July 1, 1954.**

### RESEARCH REFERENCES

**Am. Jur.**
16A Am. Jur. Legal Forms 2d, Schools § 229:118 (school board resolution of intention to sell real property).

## § 37-27-47. Advertising of sale; conduct of sale.

All such land, buildings or other property to be sold pursuant to the authority granted in Section 37-27-43, shall be sold only after the receipt of sealed bids therefor after the time and place of making such sale shall have been duly advertised in some newspaper having a general circulation in the county in which the property is located once each week for three consecutive weeks with the first publication to be made not less than fifteen days prior to the date upon which such bids are to be received and opened. The property shall be sold to the highest and best bidder for cash, but the board of trustees shall have the right to reject any and all bids. If the property be not sold pursuant to such advertisement, the board of trustees may, by resolution, set a date for an open meeting of said board of trustees to be held within sixty days after the date upon which the bids were opened. At the meeting held pursuant to such resolution the board of trustees may sell by auction the said property for a consideration not less than the highest sealed bid previously received pursuant to said advertisement. At the meeting called pursuant to said resolution any interested party may bid for cash and the property shall be sold to the highest and best bidder for cash, but the board of trustees shall have the right to reject any and all bids. The board of trustees may require a written confirmation of bids received at such called meeting before selling the property at auction, but it shall not be necessary that sealed bids be received before conducting the auction. When the sale of such property shall be authorized and approved by the board of trustees the president of the board of trustees shall be authorized and empowered to execute a conveyance of said property upon the terms and for the consideration fixed by the board. Said board of trustees shall reserve unto said agricultural high school at least an undivided one-half nonparticipating royalty interest in all oil, gas and minerals in, on or under said land, and all proceeds derived from royalties upon said reserved mineral interests shall be used as provided by Section 37-27-49. If the mineral interests of the school shall be less than the full and undivided ownership, the undivided royalty interest reserved shall be reduced proportionately.

**HISTORY: Codes, 1942, § 6328-43; Laws, 1953, Ex Sess, ch. 28, § 3, eff from and after July 1, 1954.**

**Cross References** — Advertising and conduct of sale of school district property not needed for school purposes, see § 37-7-455.

All sales under authority of § 37-27-47 shall be for cash and proceeds to be placed in the maintenance fund of the agricultural high school, see § 37-27-49.

## § 37-27-49. All sales to be for cash; disposition of proceeds.

All conveyances of property under the authority of Section 37-27-47 shall be for a cash consideration and the proceeds of such sale shall be placed in the maintenance fund of the agricultural high school. If any sale embraces realty, and the agricultural high school selling same owes outstanding bonds or notes, then in that event the proceeds of such sale shall be placed to the credit of the bond and interest sinking fund of such agricultural high school, or used to construct, renovate or purchase, under provisions elsewhere provided by law, similar type property or property of comparable value at attendance centers to be used for the same or other reasonably necessary purposes.

**HISTORY: Codes, 1942, § 6328-44; Laws, 1953, Ex Sess, ch. 28, § 4; Laws, 1964, ch. 392; Laws, 1973, ch. 311, § 1, eff from and after passage (approved March 2, 1973).**

**Cross References** — Advertising and conduct of sale, see § 37-27-47.

## § 37-27-51. Trustees may contract with school districts for attendance of pupils at agricultural high school.

The board of trustees of any agricultural high school or the board of trustees of any junior college, in connection with which an agricultural high school is operated, and the board of trustees of any school district, or a county board of education, under the conditions hereinafter provided for, are hereby authorized and empowered to enter into agreements, one with the other, providing for the attendance of any high school pupils of such school district or any grades thereof, at such agricultural high school or junior college, and for the instruction of such high school pupils or grades at such agricultural high school or junior college. Subject to the provisions of Sections 37-27-53 through 37-27-59, all such contracts so executed shall be upon such terms and conditions as may be agreed upon by and between the boards of trustees or the county board of education involved. All such contracts shall be subject to the approval of the state educational finance commission.

Any parent or guardian of such high school pupil or pupils, as to an individual pupil or as to any grade or grades, may request in writing that such agreement be entered into with the board of trustees of said agricultural high school or board of trustees of any junior college in connection with which an agricultural high school is operated. Such request shall be filed or lodged with the president or secretary of the board of trustees of such school district. Said board of trustees of said school district shall no later than the date of its next regular meeting approve or disapprove the request therein made to provide for the attendance of the pupil or pupils, or grade or grades, at such agricultural high school; failure of said board of trustees of such school district to act upon said request not later than said date shall be and will constitute a disapproval or rejection thereof.

In the event such board of trustees of said school district shall either disapprove or reject said request, or fail to act thereon on or before said date, then and in that event the county board of education is hereby authorized to act upon such request not later than the next regular meeting date of the said county board of education after the filing or lodging by such parent or guardian of a true copy of the request theretofore filed or lodged with the said board of trustees of the said school district, with the president or secretary of the said county board of education, and with said copy shall be filed or lodged a written statement of the action, if any, or non-action, taken by the board of trustees of the said school district upon the request made to it. If such request be approved by the county board of education, then it may proceed to enter into such agreement with the board of trustees of said agricultural high school or the said board of trustees of said junior college, but subject to the approval of the state educational finance commission.

**HISTORY: Codes, 1942, § 6463-01; Laws, 1954, ch. 268, § 1; Laws, 1954, Ex Sess, ch. 24, §§ 1, 2 [¶¶ 1, 2]**

**Editor's Notes —** Section 37-45-3 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

RESEARCH REFERENCES

**Am. Jur.**
16A Am. Jur. Legal Forms 2d, Schools § 229:90 (contract for instruction of nonresident students).

## § 37-27-53. Pupils entitled to transportation.

When any pupils who shall attend any agricultural high school or junior college under the provisions of Section 37-27-51 are otherwise entitled to transportation at public expense under any applicable statute, such pupils shall remain entitled to such transportation, and shall be reported for the allotment of transportation funds by the county or municipal separate school district in which they reside and, when so reported, transportation funds shall be allotted therefor just as though such pupils were attending the regular schools of the district in which they reside, and transportation shall be furnished therefor by the county board of education or board of trustees of the municipal separate school district, as the case may be, as is otherwise provided by law.

**HISTORY: Codes, 1942, § 6463-02; Laws, 1954, ch. 268, § 2.**

**Cross References** — Transportation of pupils generally, see § 37-41-1 et seq.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 293-295.

**CJS.**
78A C.J.S., Schools and School Districts §§ 1030-1036.

## § 37-27-55. Pupils reported for allocation of minimum education funds and building funds.

When any pupils shall attend any agricultural high school or junior college under the provisions of Section 37-27-51, such pupils shall be reported and accounted for the allocation of minimum education program funds and building funds just as though such pupils were attending the regular schools of the district in which they reside. For this purpose reports shall be made to the board of trustees of the school district involved by the agricultural high school or junior college of the number of children in average daily attendance, and the average daily attendance of such pupils shall thereupon be included in reports made to the county or school district under the provisions of Chapters 19 and 47 of this title. The allocation of minimum education program funds and state public school building funds shall be made for such children just as though such children were attending the regular schools of the district. However, all minimum education program funds which accrue to any district as a result of the pupils who are in attendance at such agricultural high school or junior college, except amounts allotted for transportation purposes, shall be paid by the board of trustees of the municipal separate school district or the county board of education, as the case may be, to the agricultural high school or junior college at which the pupils are in attendance, and shall be expended by said agricultural high school or junior college for the instruction of said pupils and for the purposes for which the funds were originally allotted. Funds allotted to the school district for building purposes under Chapter 47 of this title, shall, however, be retained by the school district entitled thereto. The term "school district" as used in Sections 37-27-51 through 37-27-59 shall be defined as including all public school districts in this state and also all agricultural high schools not located on the campus of a junior college.

**HISTORY: Codes, 1942, § 6463-03; Laws, 1954, ch. 268, § 3; Laws, 1964, ch. 397, § 1, eff July 1, 1964.**

**Editor's Notes —** Sections 37-19-1 through 37-19-5, 37-19-9 through 37-19-11, 37-19-15 through 37-19-19, 37-19-21, 37-19-23, and 37-19-25 through 37-19-53, referred to in this section, were repealed by Laws of 1997, ch. 612, § 30, effective from and after July 1, 2002.

Section 37-19-13, referred to in this section, was repealed by Laws of 1997, ch. 545, § 30, effective from and after passage (approved April 10, 1997) and by Laws of 1997, ch. 612, § 30, effective from and after July 1, 2002.

Sections 37-19-20 and 37-19-22, referred to in this section, were repealed by Laws of 2002, ch. 551, § 6, effective from and after July 1, 2002.

Section 37-19-24, referred to in this section, was repealed by Laws of 1999, ch. 494, § 4, effective from and after July 1, 2002.

**Cross References —** State aid for construction of school facilities, see § 37-47-1 et seq.

## § 37-27-57. Payment of additional or supplemental expenses.

Any additional or supplemental expenses incurred by the agricultural high school or junior college in the instruction of such pupils above that defrayed by minimum education funds as provided in Section 37-27-55, shall be paid either from the amounts received from the state appropriation for the support of agricultural high schools or from the tax levy for the support of such agricultural high school or junior college or from any other funds which such agricultural high school or junior college may have available for such purpose.

**HISTORY: Codes, 1942, § 6463-04; Laws, 1954, ch. 268, § 4.**

### OPINIONS OF THE ATTORNEY GENERAL

A community college that operates an agricultural high school may expend community college revenue for the support and operation of the agricultural high school. McLeod, July 2, 1999, A.G. Op. #99-0301.

## § 37-27-59. Applicability of laws.

Except as provided in Sections 37-27-51 through 37-27-57, all laws of the State of Mississippi relative to the operation and government of schools shall be applicable to pupils attending agricultural high schools or junior colleges under the provisions of said sections.

**HISTORY: Codes, 1942, § 6463-05; Laws, 1954, ch. 268, § 5.**

## § 37-27-61. County superintendent may provide for attendance out of the county.

The county superintendent of education of a county which does not alone or in conjunction with another county maintain an agricultural high school or an agricultural high school-junior college, may provide, with the approval of the county board of education and the board of supervisors, for the attendance of pupils residing in the county of which he is superintendent of education, at an agricultural high school or an agricultural high school-junior college located in a county adjoining thereto, and pay by certificate drawn by him on the county school funds for the instruction of such pupils. However, the amount so paid shall not be greater than the pro rata share of such pupils, in the actual cost of incidentals and tuition, of such agricultural high school or agricultural high school-junior college. Counties co-operating under provisions of this section shall be represented on the boards of trustees by the county superintendent of education.

**HISTORY: Codes, 1930, § 6698; 1942, § 6479; Laws, 1928, Ex Sess, ch. 36; Laws, 1930, ch. 278.**

**Cross References —** Assignment of children to schools or attendance centers, see § 37-15-13 et seq.

Attendance of county pupils at a municipal junior college, see § 37-29-273.

### RESEARCH REFERENCES

**Am. Jur.**

16A Am. Jur. Legal Forms 2d, Schools § 229:90 (contract for instruction of nonresident students).

## § 37-27-63. Municipalities and municipal separate school districts may issue bonds to support agricultural high schools.

The municipalities of Mississippi and the municipal separate school districts in Mississippi are hereby authorized and empowered to issue municipal bonds or municipal separate school district bonds to aid in procuring the establishment, location, and maintenance of agricultural high schools which have been or may hereafter be established. Such bonds shall be issued as provided by law. The proceeds of the sale of said bonds may be used for the purchase of lands, buildings or for erecting buildings, or in any way to aid in the establishment and maintenance of county agricultural high schools.

**HISTORY: Codes, 1930, § 6685; 1942, § 6465; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

**Cross References** — Uniform system for issuance of county bonds generally, see § 19-1-1 et seq.

Similar provisions authorizing bond issues for support of junior colleges, see § 37-29-265.

Issuance of school bonds generally, see § 37-59-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**

64 Am. Jur. 2d, Public Securities and Obligations §§ 110 et seq.

## § 37-27-65. Boards of supervisors may issue bonds for agricultural high schools, and agricultural high school-junior colleges.

The board of supervisors of any county which has resolved and determined to accept the terms of the law relative to the locating and establishment of agricultural schools or agricultural high school-junior colleges or which may hereafter so determine, may issue bonds upon the property of said county to aid in the building, equipment, and in any other way, the establishment and development of agricultural high schools or agricultural high school-junior colleges. Said bonds may be issued to an amount which, added to all its bonded indebtedness shall not exceed ten percent (10%) of the assessed value of the taxable property of the county appearing upon the assessment roll of the preceding year. Said bonds shall mature not later than twenty-five (25) years from the date of their issuance, and shall bear interest at such rate or rates as determined by the board of supervisors, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, payable annually. Such bonds shall be payable after five (5) years, at the option of the county. Said bonds shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, and shall be in sums of not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) each. Said bonds shall be registered as they are issued, be numbered in regular series from one (1) upwards, and be signed by the president of the board of supervisors and countersigned by the clerk, who shall impress the seal upon each bond as it is issued. Every bond shall specify on its face the purpose for which it was issued, the total amount authorized to be issued, and each shall be made payable to bearer, and the bonds so issued shall not be sold for less than their face value.

When bonds are issued as provided in this section, the board of trustees of the agricultural high school or agricultural high school-junior college are hereby authorized and empowered to use such funds in repairing and equipping buildings already erected and used by such agricultural high school or agricultural high school-junior college, and also to use such funds in erecting and equipping new buildings for such institutions.

The supervisors shall levy annually a special tax to be used exclusively in paying the interest on such bonds, and in providing a sinking fund for their redemption. When a sufficient amount of such sinking fund shall have accumulated, the board of supervisors may loan such accumulation at a rate of interest of not less than six percent (6%) and on such terms and for such time not longer than within the date fixed for the maturity of such bonds, such loan to be secured on improved real estate at not exceeding one-half (½) its assessed value, and upon abstract of such real estate, as provided for the loan of funds arising from the sale or lease of sixteenth section land.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

**HISTORY: Codes, 1930, § 6686; 1942, § 6466; Laws, 1924, ch. 283; Laws, 1928, ch. 70; Laws, 1930, ch. 278; Laws, 1983, ch. 494, § 13; Laws, 1985, ch. 477, § 4, eff from and after passage (approved April 8, 1985).**

**Cross References —** Issuance of county bonds generally, see § 19-9-1 et seq.

Election on issuance of bonds by boards of supervisors, see § 37-27-67.

Issuance of school bonds generally, see § 37-59-1 et seq.

Pledge of monies from Education Enhancement Fund to pay debt service on debt issued under this section, see § 37-61-33.

Limitation on maximum interest rate to maturity, on obligations issued under provisions of this section, see § 75-17-101.

### RESEARCH REFERENCES

**Am. Jur.**

64 Am. Jur. 2d, Public Securities and Obligations §§ 110 et seq.

## § 37-27-67. Election on issuance of bonds by boards of supervisors.

If, within three (3) weeks after notice by publication has been made of intention to issue bonds pursuant to the provisions of Section 37-27-65, ten percent (10%) of the adult taxpayers of the county shall petition against the issuance of said bonds, then the question shall be submitted to the qualified electors of the county, within twenty (20) days after the next meeting of the board of supervisors after the filing of the petition. Should a majority of those voting in such election vote against the bond issue, the bonds shall not be issued, and the order shall be null and void.

When ten percent (10%) of the adult taxpayers of the county shall petition for the issuance of bonds pursuant to the provisions of Section 37-27-65, then the board of supervisors shall submit the question to the qualified electors of the county within twenty (20) days after the meeting of the board of supervisors at which such petition is filed. Should a majority of those voting in such election vote for the bond issue the bonds shall be issued by the board of supervisors as provided by law, but if a majority of the qualified electors voting at such election should vote against the bond issue, the bonds shall not be issued.

**HISTORY: Codes, 1930, § 6686; 1942, § 6466; Laws, 1924, ch. 283; Laws, 1928, ch. 70; Laws, 1930, ch. 278.**

**Cross References —** Uniform system for issuance of county bonds generally, see § 37-1-1 et seq.

Boards of supervisors may issue bonds for agricultural high schools and agricultural high school-junior colleges, see § 37-27-65.

## § 37-27-69. Agricultural high school may borrow not to exceed $50,000 for housing facilities.

Any agricultural high school, supported in whole or in part by tax levies of one or more counties, may borrow not exceeding Fifty Thousand Dollars ($50,000.00), for the purpose of receiving, transporting, erecting on the ground of said institution, and equipping and furnishing any prefabricated houses, or other materials, or appliances, fixtures, machines, furnishings or equipment, obtained by grant or otherwise from the United States of America or any department or agency thereof, or from any other source, where the same may be acquired for the use of the institution, any student personnel, or faculty members.

**HISTORY: Codes, 1942, § 6466-01; Laws, 1946, ch. 366, § 1.**

**Cross References —** Declaration of intention to borrow, issuance of notes, and repayment, see § 37-27-11.

Similar provisions authorizing borrowing by junior colleges, see § 37-29-121.

Borrowing by boards of trustees of state institutions of higher learning, see § 37-101-91 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

A county agricultural high school could borrow up to $50,000.00 for the purpose of equipping and/or furnishing certain improvements constructed with the monies derived from the Mississippi Adequate Education Program and/or a bond issue. Pope III, February 12, 1999, A.G. Op. #99-0058.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 44, 92, 94, 95, 100, 147, 148.

**CJS.**

78A C.J.S., Schools and School Districts §§ 964 et seq.

## § 37-27-71. Declaration of intention to borrow; issuance of notes; repayment.

In any such case the board of trustees of such agricultural high school, by resolution or order, shall declare its intention to borrow any sum not in excess of the limitation fixed in Section 37-27-69, and shall recite in said resolution or order with reasonable particulars the purpose for which said funds are to be borrowed, and shall fix a schedule of amounts and dates of maturities by which such loans shall be repaid. Such resolution or order shall be duly recorded in the permanent minutes of the board of trustees of such institution. All such loans shall be fully repaid within six (6) years, and they shall be evidenced by notes signed by the president and secretary of the board of trustees, which shall bear appropriate reference to the resolution or order of the board of trustees authorizing such loan. Such loan shall be retired in installments of not less than one-fifth (⅕) the amount thereof on the first day of April of the year next succeeding the date of such loan and an equal amount on the same date of each and every year thereafter until said loan is paid.

Notes issued in evidence of such loans shall bear interest at a rate of not to exceed four percent (4%) per annum, all interest payable semi-annually, and no such note shall be sold or negotiated by said institution for less than par and accrued interest. Funds received by such institution from the sale or negotiation of any such notes shall be paid into the treasury of the institution and disbursed as other funds thereof are disbursed, but for no other purpose than that authorized by Section 37-27-69. Such notes shall be lithographed, or engraved, and printed in two (2) or more colors to prevent counterfeiting. Such notes shall bear the signature of the agricultural high school issuing the same, by the president and secretary of the board of trustees thereof. They shall be impressed with the seal of such institution. Interest coupons attached may bear the facsimile signatures of the aforesaid officers of the board of trustees. Before negotiation or sale and delivery thereof, said notes shall be registered in a book kept in the business office of such institution.

All indebtedness so created shall be paid from first funds derived from tax levies for maintenance and operation of said school coming into the treasury thereof and from fees, rentals and other charges as provided in Section 37-27-73. In order to secure the prompt payment of any and all indebtedness, whether of principal or interest incurred hereunder, a special fund shall be established in the depository of the funds of said institution, the style of which shall be, "debt retirement fund of ________ agricultural high school," and immediately upon receipt of the distribution of said first funds derived from such tax levies, annually hereafter in advance of the due date of each and every installment of said indebtedness, a sufficient sum from said taxes shall be paid into said special fund for the retirement of all principal and interest coming due within said year equal to the difference, if any, between such principal and interest and the amount collected from fees, rentals and other charges, as provided in Section 37-27-73. Said debt retirement fund shall be used for no other purpose than for the payment of principal and interest of indebtedness incurred hereunder.

**HISTORY: Codes, 1942, § 6466-02; Laws, 1946, ch. 366, § 2.**

## § 37-27-73. Board of trustees to fix and collect fees, rents and charges; disposition of monies; limitations.

The board of trustees of any such agricultural high school borrowing money pursuant to the authority granted in Section 37-27-69, is hereby authorized and empowered to fix, maintain and collect fees, rentals and other charges to be paid by students, faculty members and others using, housed in or being served by any building or other housing facility erected or established under the terms and provisions of said section. All such fees, rentals and other charges shall be paid into the debt retirement fund specified in Section 37-27-71 and shall be pledged for the prompt repayment of any and all indebtedness, whether of principal or interest, incurred under the provisions of said section. Nothing in Sections 37-27-69 through 37-27-75 shall be construed to authorize the levying or imposition of any taxes in excess of the limits and amounts which are now or may hereafter be provided by law.

**HISTORY: Codes, 1942, § 6466-03; Laws, 1946, ch. 366, § 3.**

## § 37-27-75. Foregoing sections as cumulative.

Sections 37-27-69 through 37-27-73 shall be construed as cumulative and no restriction, limitation or prohibition of the general laws shall operate to curtail the authority or prescribe the procedure by which the purposes of said sections shall be effected.

**HISTORY: Codes, 1942, § 6466-04; Laws, 1946, ch. 366, § 4.**

## § 37-27-77. Purchase of bus for benefit of agricultural high schools in certain counties.

The board of supervisors of any county wherein there is located an agricultural high school not located upon the campus of a junior college may, in its discretion, purchase a bus for the use and benefit of said agricultural high school to be used in connection with various school activities and to be paid for from the general fund of the county.

**HISTORY: Codes, 1942, § 6486-11; Laws, 1971, ch. 444, § 1, eff from and after passage (approved March 25, 1971).**

### RESEARCH REFERENCES

**CJS.**

78A C.J.S., Schools and School Districts
§ 786.

## § 37-27-79. Report and recommendations for consolidation of agricultural high schools; abolition of agricultural high school pursuant to petition; election.

(1) The State Board of Education shall review and develop a report relating to the need for a separate board of trustees and separate administrative office for the Coahoma Agricultural High School, the Forrest Agricultural High School and the Hinds Agricultural High School and shall submit this finding with recommendations for any necessary legislation to the Chairmen of the Senate and House Education Committees on or before December 1, 2012,

for consideration in the 2013 Regular Session. Said report shall include any necessary recommendations for the consolidation and transfer of administrative offices, transfer of real and personal property, and transfer of students from such agricultural high school to the appropriate school district.

(2) Any agricultural high school in this state (whether maintained by one (1) county or more than one (1) county) may be abolished when twenty percent (20%) of the qualified electors residing in such county or counties shall file a petition with the board of supervisors or boards of supervisors of such county or counties, and request that such school be abolished. Thereupon, the question shall be submitted to an election of the qualified electors of the county or counties within not less than thirty (30) days nor more than sixty (60) days after the next meeting of the board of supervisors or boards of supervisors after the filing of the petition. At such election said electors may vote for abolishing the agricultural high school or against abolishing the agricultural high school. If a majority of the votes cast in such election be in favor of abolishing such school, then such school shall be abolished. If less than a majority of those voting fail to vote for abolishing such school then it shall not be abolished but shall be supported and maintained as now provided by law. When an election is called under this section and the school is not abolished, then another election cannot be held for a period of two (2) years.

**HISTORY: Codes, 1930, § 6687; 1942, § 6467; Laws, 1930, ch. 81; Laws, 1934, ch. 262; Laws, 2012, ch. 551, § 3, eff September 10, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).**

**Editor's Notes** — By letter dated September 10, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 551.

**Cross References** — Consent of school board of school districts involved in implementing the provisions of this section, § 37-7-104 or 37-7-104.1, not required for the administrative consolidation of the school districts pursuant to order of State Board of Education, see § 37-7-103.

## § 37-27-80. Hinds Agriculture High School discontinued; disposal of property; diplomas.

(1) Effective July 1, 2014, the Hinds Agriculture High School shall be closed. Upon closure, all real property titled to or used by Hinds Agricultural High School will become the property of the Hinds Community College District.

(2) All personal property used by the Hinds Agricultural High School for secondary school purposes, including all nondisposable sports and/or extracurricular equipment (i.e., football helmets, shoulder pads, baseball bats and helmets, and band equipment) will become the property of the Hinds County School District. The division of such personal property will be determined by joint order of the Boards of Trustees of Hinds Community College District and Hinds County School District. Any cost of transferring title of such real or personal property will be paid by Hinds Community College District.

(3) Any such joint order directing the transfer of the personal property of the Hinds Agricultural High School shall be submitted and approved by the State Board of Education. The finding of the State Board of Education shall be final and conclusive for the purpose of the transfer of property required by such administrative consolidation.

(4) The students attending the said agricultural high school shall be deemed to be students of the school district where they reside. After closure of Hinds Agricultural High School, any student who is enrolled at the Hinds Agricultural High School when the closure is effected may receive two (2) diplomas upon successful completion of all graduation requirements of the school district they subsequently attend: one (1) diploma to be the official completion with the school district they subsequently attend and the second to be a courtesy diploma reflecting graduation from Hinds Agriculture High School.

(5) In the event that Hinds Agricultural High School is closed, there will be a two-year waiver of test scores of Hinds Agricultural High School students being included in accountability calculations for Raymond High School and the Hinds County School District, subject to approval by the State Department of Education. In addition, the students from Hinds Agricultural High School will not be included in the graduation cohort for accountability calculations for the Hinds County School District, subject to approval by the State Department of Education.

**HISTORY: Laws, 2014, ch. 520, § 1, eff from and after July 1, 2014.**

### § 37-27-81. Sale of school property upon abolition of school pursuant to petition and election; disposition of proceeds.

When an agricultural high school is abolished under the provisions of Section 37-27-79, then it shall be the duty of the board of supervisors or boards of supervisors, to advertise the sale of and to sell all of the property of such school to the highest bidders for cash. The proceeds of such sale shall be used to pay off any outstanding indebtedness of such school. If there is a balance after paying all outstanding indebtedness then such balance shall be paid into the county school fund of such county or counties.

In the event the proceeds of the sale of the property of such school are not sufficient to pay all outstanding indebtedness of such school, then the board or boards of supervisors of such county or counties shall levy a tax on the property of the county or counties sufficient to pay the outstanding indebtedness when it becomes due.

Alternatively, the board of supervisors may transfer any part or all of such property to any school district in said county.

**HISTORY: Codes, 1930, § 6687; 1942, § 6467; Laws, 1930, ch. 81; Laws, 1934, ch. 262.**

**Cross References —** Acquisition and disposition of school district property, see §

37-7-471 et seq.
Disposition of property on dissolution of school district, see § 37-7-501 et seq.

### § 37-27-83. Disposal of school property when school is discontinued.

The board of trustees of any agricultural high school in the state, which on account of loss or destruction of school property by fire, storm, or other like unforeseen disaster, can no longer be maintained and operated successfully, is, with the approval of the board of supervisors, hereby authorized to sell and dispose of the lands, buildings, and other property belonging to such school, and place the proceeds derived from the sale of same to the credit of the county common school fund.

Sale of said property may be made at public or private sale on such terms as the board of trustees may elect, subject to the approval of the board of supervisors. In case of sale on credit, the deferred payments shall be evidenced by notes payable to the county, for the benefit of the county common school fund and shall bear interest at a rate of not less than six percent (6%) per annum, and the county shall have a lien on the property for the purchase-money, as against all persons, until paid.

The deed or deeds of conveyance shall be executed by the president or chairman and the secretary of the board of trustees, pursuant to an order of the board of trustees, entered on its minutes, and pursuant to an order of approval by the board of supervisors entered on its minutes, and when so executed shall be fully effective to convey title to said property.

**HISTORY: Codes, 1930, § 6688; 1942, § 6469; Laws, 1924, ch. 292; Laws, 1930, ch. 278.**

**Cross References —** Acquisition and disposition of school district property, see § 37-7-471 et seq.
Disposition of property on dissolution of school district, see § 37-7-501 et seq.

### § 37-27-85. Donated lands may be reconveyed when school is discontinued.

The board of trustees of any such school as is discontinued, as provided in Section 37-27-83, is further authorized with the approval of the board of supervisors to reconvey to the original grantors thereof, or their heirs, any lands which may have been donated to the trustees of such school for school purposes, except that part of the same, to be designated by the board of trustees, on which the school buildings are located. The deeds of conveyance shall be executed as provided in Section 37-27-83.

**HISTORY: Codes, 1930, § 6689; 1942, § 6470; Laws, 1924, ch. 292; Laws, 1930, ch. 278.**

**Cross References —** Acquisition and disposition of school district property, see § 37-7-471 et seq.
Disposition of property on dissolution of school district, see § 37-7-501 et seq.

## RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 103, 104, 106, 109.

**CJS.**
78A C.J.S., Schools and School Districts §§ 738, 741, 742, 764-767, 773.

## § 37-27-87. Transfer of funds when school is discontinued.

In the event any such school is permanently discontinued, as provided for in Section 37-27-83, the board of trustees of such school and the board of supervisors of the county in which such school is located, are further authorized to transfer to the county common school fund of the county all funds on hand in the county treasury or depository to the credit of such school, including all maintenance funds and other funds belonging to such school. In case the school thus discontinued shall be a joint school maintained by two counties, as now provided by law, the school funds belonging to such school and the proceeds derived from the sale of school property shall be divided between the counties interested in proportion to the amount of funds contributed by each county to the establishment and maintenance of such school.

**HISTORY: Codes, 1930, § 6690; 1942, § 6471: Laws, 1924, ch. 292; Laws, 1930, ch. 278.**

## § 37-27-89. Distribution and use of funds when school is discontinued.

All funds placed to the credit of the county common school fund, under the provisions of Sections 37-27-83, 37-27-87, shall be distributed in the same manner as is provided for the distribution of the county common school funds, and shall be used for the support and maintenance of the public schools of the county.

**HISTORY: Codes, 1930, § 6691; 1942, § 6472; Laws, 1924, ch. 292; Laws, 1930, ch. 278.**

## § 37-27-91. Abolition of school not operated in four years.

Any agricultural high school in this state, which has not been operated and maintained as an agricultural high school for four years last past, which does not own sufficient buildings in which to operate and maintain an agricultural high school, and which owes legal, valid and outstanding debts, may be abolished by the board of supervisors of the county in which such agricultural high school is located.

In the event an agricultural high school is abolished as provided in this section, the property of such school may be sold by the board of supervisors of such county. The proceeds of the sale of such property shall be used to pay the debts of the school, and the balance, if any, shall be paid into the general school fund of the county.

This section is intended to provide an additional method for abolishing agricultural high schools and it will not amend or repeal any other law providing for the abolishing of such schools.

**HISTORY: Codes, 1942, § 6468.**

### § 37-27-93. Application to convert Coahoma Agricultural High School to Early College High School; transfer upon approval; transfer of personal property; diplomas.

(1) The Board of Trustees of Coahoma Agricultural High School are authorized to make application to the Mississippi Department of Education for the approval of converting the facilities and programs of the agricultural high school to an Early College High School. In the event the State Board of Education approves this application, effective July 1, 2018, the Coahoma Agricultural High School shall be transferred to the Coahoma Community College District and shall be used as an Early College High School serving up to four hundred (400) students from the following counties: Bolivar, Coahoma, Tunica, Tallahatchie and Quitman. The conversion from Coahoma Agricultural High School to the Early College High School shall be administered on a phased-in basis beginning with ninth-grade students and adding on one (1) grade level every year from the applicable counties until the school has full enrollment. Students who are currently enrolled in Coahoma Agricultural High School in Grades 10-12 may be enrolled at the facility as students at the Early College High School and continue in the system. From July 1, 2016, through July 1, 2018, the President and Board of Trustees of Coahoma Agricultural High School shall cooperate with the Board of Trustees of the Coahoma Community College District for the transition of the facilities and programs. The Board of Trustees of the Coahoma Agricultural High School and the Board of Trustees of the Coahoma Community College District shall redesign the facilities in order to establish an environment that supports college readiness for all students through a required college preparatory curriculum, access to college courses, counseling for college admissions, and other college readiness activities, such as explicit instruction in college behavior and expectations. All real property titled to or used by Coahoma Agricultural High School will become the property of the Coahoma Community College District.

(2) All personal property used by the Coahoma Agricultural High School for secondary school purposes, including all nondisposable sports and/or extracurricular equipment (i.e., football helmets, shoulder pads, baseball bats and helmets, and band equipment) will become the property of the Coahoma Community College District. The division of such personal property will be determined by joint order of the Boards of Trustees of the Coahoma Community College District and the Coahoma County School District. Any cost of transferring title of such real or personal property will be paid by the Coahoma Community College District.

(3) Any such joint order directing the transfer of the personal property of the Coahoma Agricultural High School shall be submitted and approved by the

State Board of Education. The finding of the State Board of Education shall be final and conclusive for the purpose of the transfer of property required by such administrative consolidation.

(4) The students attending the said agricultural high school shall be deemed to be students of the school district where they reside. After transfer of the Coahoma Agricultural High School, any student who is enrolled at the Coahoma Agricultural High School when the transfer is effected may receive two (2) diplomas upon successful completion of all graduation requirements of the school district they subsequently attend: one (1) diploma to be the official completion with the school district they subsequently attend and the second to be a courtesy diploma reflecting graduation from Coahoma Agricultural High School.

(5) The State Board of Education shall issue regulations providing for the automatic transfer of students in the surrounding counties who wish to enroll in the Early College High School.

**HISTORY: Laws, 2016, ch. 467, § 1, eff from and after July 1, 2016.**

### § 37-27-95. Application to convert Coahoma Agricultural High School to Early College High School; closure upon disapproval; disposition of property; diplomas.

(1) In the event the State Board of Education does not approve the application of the Board of Trustees of the Coahoma Agricultural High School to establish an Early College High School, effective July 1, 2018, the Coahoma Agricultural High School shall be closed. Upon closure, all real property titled to or used by Coahoma Agricultural High School will become the property of the Coahoma Community College District.

(2) All personal property used by the Coahoma Agricultural High School for secondary school purposes, including all nondisposable sports and/or extracurricular equipment (i.e., football helmets, shoulder pads, baseball bats and helmets, and band equipment) will become the property of the Coahoma Community College. Any cost of transferring title of such real or personal property will be paid by Coahoma Community College District.

(3) Any such joint order directing the transfer of the personal property of the Coahoma Agricultural High School shall be submitted and approved by the State Board of Education. The finding of the State Board of Education shall be final and conclusive for the purpose of the transfer of property required by such administrative consolidation.

(4) The students attending the said agricultural high school shall be deemed to be students of the school district where they reside. After closure of Coahoma Agricultural High School, any student who is enrolled at the Coahoma Agricultural High School when the closure is effected may receive two (2) diplomas upon successful completion of all graduation requirements of the school district they subsequently attend: one (1) diploma to be the official completion with the school district they subsequently attend and the second to

be a courtesy diploma reflecting graduation from Coahoma Agricultural High School.

**HISTORY: Laws, 2016, ch. 467, § 2, eff from and after July 1, 2016.**

# CHAPTER 28.

# MISSISSIPPI CHARTER SCHOOLS ACT OF 2013

Sec.
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37-28-3. Legislative findings and declarations.
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37-28-47. Qualifications of charter school employees; applicability of Education Employment Procedures Law.
37-28-49. Criminal history record checks and fingerprinting requirements; termination of charter school employee for certain acts.
37-28-51. Charter schools eligible to participate in state- or district-sponsored athletic and academic interscholastic activities.
37-28-53. Charter schools required to certify enrollment, average daily attendance and certain additional information on annual basis.
37-28-55. Charter school funding; adequate education program payments; local funding; federal and state categorical aid program monies; state transportation funding.

Sec.
37-28-57. Annual financial audit.
37-28-59. Monies remaining in charter school's accounts at end of budget year to be used during subsequent budget years; authorization to accept gifts, grants, etc.; disclosure of funds from private and foreign sources.
37-28-61. Right of first refusal to purchase vacant public school facilities; public entities authorized to provide space to charters in their facilities under preexisting zoning and land use designations.
37-28-63. Repealed.

## § 37-28-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Charter Schools Act of 2013."

**HISTORY: Laws, 2013, ch. 497, § 1, eff from and after July 1, 2013.**

**Editor's Notes** — A former § 37-28-1 [Laws, 1997, ch. 584, § 1; reenacted without change, Laws, 2001, ch. 531, § 1; reenacted without change, Laws, 2004, ch. 576, § 1; reenacted without change, Laws, 2005, ch. 508, § 1; reenacted without change, Laws, 2007, ch. 543, § 1; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to the intent of the Legislature regarding charter schools.

### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-28-3. Legislative findings and declarations.

(1) The Legislature finds and declares that the general purposes of the state's charter schools are as follows:

(a) To improve student learning by creating high-quality schools with high standards for student performance;

(b) To close achievement gaps between high-performing and low-performing groups of public school students;

(c) To increase high-quality educational opportunities within the public education system for all students, especially those with a likelihood of academic failure;

(d) To create new professional opportunities for teachers, school administrators and other school personnel which allow them to have a direct voice in the operation of their schools;

(e) To encourage the use of different, high-quality models of teaching, governing, scheduling and other aspects of schooling which meet a variety of student needs;

(f) To allow public schools freedom and flexibility in exchange for exceptional levels of results driven accountability;

(g) To provide students, parents, community members and local entities with expanded opportunities for involvement in the public education system; and

(h) To encourage the replication of successful charter schools.

(2) All charter schools in the state established under this chapter are public schools and are part of the state's public education system.

(3) No provision of this chapter may be interpreted to allow the conversion of private schools into charter schools.

**HISTORY: Laws, 2013, ch. 497, § 2, eff from and after July 1, 2013.**

**Editor's Notes —** A former § 37-28-3 [Laws, 1997, ch. 584, § 2; reenacted without change, Laws, 2001, ch. 531, § 2; reenacted without change, Laws, 2004, ch. 576, § 2; reenacted without change, Laws, 2005, ch. 508, § 2; reenacted without change, Laws, 2007, ch. 543, § 2; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to definitions for terms used in the chapter.

## § 37-28-5. Definitions.

As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Applicant" means any person or group that develops and submits an application for a charter school to the authorizer.

(b) "Application" means a proposal from an applicant to the authorizer to enter into a charter contract whereby the proposed school obtains charter school status.

(c) "Authorizer" means the Mississippi Charter School Authorizer Board established under Section 37-28-7 to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee charter schools, and decide whether to renew, not renew, or revoke charter contracts.

(d) "Charter contract" means a fixed-term, renewable contract between a charter school and the authorizer which outlines the roles, powers, responsibilities and performance expectations for each party to the contract.

(e) "Charter school" means a public school that is established and operating under the terms of charter contract between the school's governing board and the authorizer. The term "charter school" includes a conversion charter school and start-up charter school.

(f) "Conversion charter school" means a charter school that existed as a noncharter public school before becoming a charter school.

(g) "Education service provider" means a charter management organization, school design provider or any other partner entity with which a charter school intends to contract for educational design, implementation or comprehensive management.

(h) "Governing board" means the independent board of a charter school which is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school's application.

(i) "Noncharter public school" means a public school that is under the direct management, governance and control of a school board or the state.

(j) "Parent" means a parent, guardian or other person or entity having legal custody of a child.

(k) "School board" means a school board exercising management and control over a local school district and the schools of that district pursuant to the State Constitution and state statutes.

(*l*) "School district" means a governmental entity that establishes and supervises one or more public schools within its geographical limits pursuant to state statutes.

(m) "Start-up charter school" means a charter school that did not exist as a noncharter public school before becoming a charter school.

(n) "Student" means any child who is eligible for attendance in a public school in the state.

(o) "Underserved students" means students participating in the federal free lunch program who qualify for at-risk student funding under the Mississippi Adequate Education Program and students who are identified as having special educational needs.

**HISTORY: Laws, 2013, ch. 497, § 3, eff from and after July 1, 2013.**

**Editor's Notes —** A former § 37-28-5 [Laws, 1997, ch. 584, § 3, eff from and after passage (approved April 24, 1997); reenacted without change, Laws, 2001, ch. 531, § 3; reenacted without change, Laws, 2004, ch. 576, § 3; reenacted without change, Laws, 2005, ch. 508, § 3; reenacted without change, Laws, 2007, ch. 543, § 3; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to the petition requirements for local schools requesting charter school status.

**Cross References —** Mississippi Adequate Education Program, see § 37-151-1 et seq.

## § 37-28-7. Mississippi Charter School Authorizer Board created; jurisdiction; mission; composition.

(1) There is created the Mississippi Charter School Authorizer Board as a state agency with exclusive chartering jurisdiction in the State of Mississippi. Unless otherwise authorized by law, no other governmental agency or entity may assume any charter authorizing function or duty in any form.

(2)(a) The mission of the Mississippi Charter School Authorizer Board is to authorize high-quality charter schools, particularly schools designed to expand opportunities for underserved students, consistent with the purposes of this chapter. Subject to the restrictions and conditions prescribed in this subsection, the Mississippi Charter School Authorizer Board may authorize charter schools within the geographical boundaries of any school district.

(b) The Mississippi Charter School Authorizer Board may approve a maximum of fifteen (15) qualified charter applications during a fiscal year.

(c) In any school district designated as an "A," "B" or "C" school district by the State Board of Education under the accreditation rating system at the time of application, the Mississippi Charter School Authorizer Board may authorize charter schools only if a majority of the members of the local school board votes at a public meeting to endorse the application or to initiate the application on its own initiative.

(3) The Mississippi Charter School Authorizer Board shall consist of seven (7) members, to be appointed as follows:

(a) Three (3) members appointed by the Governor, with one (1) member being from each of the Mississippi Supreme Court Districts.

(b) Three (3) members appointed by the Lieutenant Governor, with one (1) member being from each of the Mississippi Supreme Court Districts.

(c) One (1) member appointed by the State Superintendent of Public Education.

All appointments must be made with the advice and consent of the Senate. In making the appointments, the appointing authority shall ensure diversity among members of the Mississippi Charter School Authorizer Board.

(4) Members appointed to the Mississippi Charter School Authorizer Board collectively must possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum and instruction, and public education law. Each member of the Mississippi Charter School Authorizer Board must have demonstrated an understanding of and commitment to charter schooling as a strategy for strengthening public education.

(5) To establish staggered terms of office, the initial term of office for the three (3) Mississippi Charter School Authorizer Board members appointed by the Governor shall be four (4) years and thereafter shall be three (3) years; the initial term of office for the three (3) members appointed by the Lieutenant Governor shall be three (3) years and thereafter shall be three (3) years; and the initial term of office for the member appointed by the State Superintendent of Public Education shall be two (2) years and thereafter shall be three (3) years. No member may serve more than two (2) consecutive terms. The initial appointments must be made before September 1, 2013.

(6) The Mississippi Charter School Authorizer Board shall meet as soon as practical after September 1, 2013, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(7) An individual member of the Mississippi Charter School Authorizer Board may be removed by the board if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the board, as determined and specified by the board in its bylaws. Whenever a vacancy on the Mississippi Charter School Authorizer Board exists, the original appointing authority shall appoint a member for the remaining portion of the term.

(8) No member of the Mississippi Charter School Authorizer Board or employee, agent or representative of the board may serve simultaneously as an employee, trustee, agent, representative, vendor or contractor of a charter school authorized by the board.

(9) The Mississippi Charter School Authorizer Board shall appoint an individual to serve as the Executive Director of the Mississippi Charter School Authorizer Board. The executive director shall possess the qualifications established by the board which are based on national best practices, and shall

possess an understanding of state and federal education law. The executive director, who shall serve at the will and pleasure of the board, shall devote his full time to the proper administration of the board and the duties assigned to him by the board and shall be paid a salary established by the board, subject to the approval of the State Personnel Board. Subject to the availability of funding, the executive director may employ such administrative staff as may be necessary to assist the director and board in carrying out the duties and directives of the Mississippi Charter School Authorizer Board.

(10) The Mississippi Charter School Authorizer Board is authorized to obtain suitable office space for administrative purposes. In acquiring a facility or office space the authorizer board shall adhere to all policies and procedures required by the Department of Finance and Administration and the Public Procurement Review Board.

**HISTORY: Laws, 2013, ch. 497, § 4; Laws, 2014, ch. 458, § 2; Laws, 2016, ch. 420, § 1, eff from and after July 1, 2016.**

**Editor's Notes —** A former § 37-28-7 [Laws, 1997, ch. 584, § 4; reenacted without change, Laws, 2001, ch. 531, § 4; reenacted without change, Laws, 2004, ch. 576, § 4; reenacted without change, Laws, 2005, ch. 508, § 4; reenacted without change, Laws, 2007, ch. 543, § 4; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to rules and regulations for the operation of a charter school.

## § 37-28-9. Powers and duties of Authorizer Board; immunity from civil liability.

(1) The authorizer is responsible for exercising, in accordance with this chapter, the following powers and duties:

(a) Developing chartering policies and maintaining practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility, including:

(i) Organizational capacity and infrastructure;

(ii) Solicitation and evaluation of charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation; and

(v) Charter renewal decision-making;

(b) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;

(c) Declining to approve weak or inadequate charter applications;

(d) Negotiating and executing charter contracts with approved charter schools;

(e) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools;

(f) Determining whether each charter contract merits renewal, nonrenewal or revocation; and

(g) Applying for any federal funds that may be available for the implementation of charter school programs.

(2) The authorizer shall carry out all its duties under this chapter in a

manner consistent with nationally recognized principles and standards and with the spirit and intent of this chapter.

(3) The authorizer may delegate its duties to the executive director and general counsel.

(4) Regulation by the authorizer shall be limited to those powers and duties prescribed in this section and all others prescribed by law, consistent with the spirit and intent of this chapter.

(5) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the authorizer, members of the authorizer board in their official capacity, and employees of the authorizer in their official capacity are immune from civil liability with respect to all activities related to a charter school approved by the authorizer.

**HISTORY: Laws, 2013, ch. 497, § 5, eff from and after July 1, 2013.**

**Editor's Notes** — A former § 37-28-9 [Laws, 1997, ch. 584, § 5; reenacted without change, Laws, 2001, ch. 531, § 5; reenacted without change, Laws, 2004, ch. 576, § 5; reenacted without change, Laws, 2005, ch. 508, § 5; reenacted without change, Laws, 2007, ch. 543, § 5; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to the terms of the charter.

## § 37-28-11. Funding for the Authorizer Board.

(1) To cover the costs of overseeing charter schools in accordance with this chapter, the authorizer shall receive three percent (3%) of annual per-pupil allocations received by a charter school from state and local funds for each charter school it authorizes.

(2) The authorizer may receive appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this chapter, subject to all lawful terms and conditions under which the gifts, grants or donations are given.

(3) The authorizer may expend its resources, seek grant funds and establish partnerships to support its charter school authorizing activities.

**HISTORY: Laws, 2013, ch. 497, § 6, eff from and after July 1, 2013.**

**Editor's Notes** — A former § 37-28-11 [Laws, 1997, ch. 584, § 6; reenacted without change, Laws, 2001, ch. 531, § 6; reenacted without change, Laws, 2004, ch. 576, § 6; reenacted without change, Laws, 2005, ch. 508, § 6; reenacted without change, Laws, 2007, ch. 543, § 6; Repealed by operation of law by former § 37-38-21, eff from and after July 1, 2009.] pertained to the disapproval of petitions for charter school status and provided for a hearing to receive additional information.

## § 37-28-13. Technical information and assistance from Department of Education; publication of laws and regulations applicable to charter schools.

(1) Upon request, the State Department of Education shall assist the Mississippi Charter School Authorizer Board with implementing the authoriz-

er's decisions by providing such technical assistance and information as may be necessary for the implementation of this chapter.

(2) Before July 1 of each year, the authorizer shall publish a pamphlet, which may be in electronic form, containing:

(a) All statutes in Title 37, Mississippi Code of 1972, which are applicable to the charter schools;

(b) Any rules, regulations and policies adopted by the State Superintendent of Public Education, the State Board of Education or the State Department of Education with which charter schools must comply by virtue of the applicability to charter schools, as well as other public schools, of the state law to which those relevant rules, regulations and policies pertain; and

(c) Any other state and federal laws and matters that are relevant to the establishment and operation of charter schools in the State of Mississippi.

The Mississippi Charter School Authorizer Board shall make the pamphlet available to the public on the board's website and shall notify all prospective applicants of the pamphlet.

**HISTORY: Laws, 2013, ch. 497, § 7, eff from and after July 1, 2013.**

**Editor's Notes** — A former § 37-28-13 [Laws, 1997, ch. 584, § 7; reenacted without change, Laws, 2001, ch. 531, § 7; reenacted without change, Laws, 2004, ch. 576, § 7; reenacted without change, Laws, 2005, ch. 508, § 7; reenacted without change, Laws, 2007, ch. 543, § 7; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to the duration and renewal of the charter.

## § 37-28-15. Authorizer to publicize request for proposals for charter school applications; request for proposals to prescribe mandatory elements of charter applications.

(1) To solicit, encourage and guide the development of quality charter school applications, the authorizer shall issue and publicize a request for proposals before September 1 of each year; however, during 2013, the authorizer shall issue and publicize a request for proposals before December 1. The content and dissemination of the request for proposals must be consistent with the purposes and requirements of this chapter.

(2) The authorizer annually shall establish and disseminate a statewide timeline for charter approval or denial decisions.

(3) The authorizer's request for proposals must include the following:

(a) A clear statement of any preferences the authorizer wishes to grant to applications intended to help underserved students;

(b) A description of the performance framework that the authorizer has developed for charter school oversight and evaluation in accordance with Section 37-28-29;

(c) The criteria that will guide the authorizer's decision to approve or deny a charter application; and

(d) A clear statement of appropriately detailed questions, as well as guidelines, concerning the format and content essential for applicants to demonstrate the capacities necessary to establish and operate a successful charter school.

(4) In addition to all other requirements, the request for proposals must require charter applications to provide or describe thoroughly all of the following mandatory elements of the proposed school plan:

(a) An executive summary;

(b) The mission and vision of the proposed charter school, including identification of the targeted student population and the community the school hopes to serve;

(c) The location or geographic area proposed for the school;

(d) The grades to be served each year for the full term of the charter contract;

(e) Minimum, planned and maximum enrollment per grade per year for the term of the charter contract;

(f) Evidence of need and community support for the proposed charter school;

(g) Background information, including proof of United States citizenship, on the applicants, the proposed founding governing board members and, if identified, members of the proposed school leadership and management team. The background information must include annual student achievement data, disaggregated by subgroup, for every school under the current or prior management of each board member and leadership team member;

(h) The school's proposed calendar, including the proposed opening and closing dates for the school term, and a sample daily schedule. The school must be kept in session no less than the minimum number of school days established for all public schools in Section 37-13-63;

(i) A description of the school's academic program, aligned with state standards;

(j) A description of the school's instructional design, including the type of learning environment (such as classroom-based or independent study), class size and structure, curriculum overview and teaching methods;

(k) The school's plan for using internal and external assessments to measure and report student progress on the performance framework developed by the authorizer in accordance with Section 37-28-29;

(*l*) The school's plan for identifying and successfully serving students with disabilities (including all of the school's proposed policies pursuant to the Individuals with Disabilities Education Improvement Act of 2004, 20 USCS Section 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 USCS Section 794, and Title 11 of the Americans with Disabilities Act, 42 USCS Section 12101 et seq., and the school's procedures for securing and providing evaluations and related services pursuant to federal law), students who are English language learners, students who are academically behind, and gifted students, including, but not limited to, compliance with any applicable laws and regulations;

(m) A description of cocurricular or extracurricular programs and how those programs will be funded and delivered;

(n) Plans and timelines for student recruitment and enrollment, including lottery policies and procedures that ensure that every student has an equal opportunity to be considered in the lottery and that the lottery is equitable, randomized, transparent and impartial so that students are accepted in a charter school without regard to disability, income level, race, religion or national origin;

(o) The school's student discipline policies, including those for special education students;

(p) An organizational chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, education service provider, staff, related bodies (such as advisory bodies or parent and teacher councils), and all other external organizations that will play a role in managing the school;

(q) A clear description of the roles and responsibilities of the governing board, education service provider, school leadership team, management team and all other entities shown in the organizational chart;

(r) A staffing chart for the school's first year, and a staffing plan for the term of the charter;

(s) Plans for recruiting and developing school leadership and staff, which may not include utilization of nonimmigrant foreign worker visa programs;

(t) The school's leadership and teacher employment policies, including performance evaluation plans;

(u) Proposed governing bylaws;

(v) Explanations of any partnerships or contractual relationships central to the school's operations or mission;

(w) The school's plans for providing transportation, food service and all other significant operational or ancillary services;

(x) Opportunities and expectations for parent involvement;

(y) A detailed school start-up plan, identifying tasks, timelines and responsible individuals;

(z) A description of the school's financial plans and policies, including financial controls and audit requirements;

(aa) A description of the insurance coverage the school will obtain;

(bb) Start-up and five-year budgets with clearly stated assumptions;

(cc) Start-up and first-year cash flow projections with clearly stated assumptions;

(dd) A disclosure of all sources of private funding and all funds from foreign sources, including gifts from foreign governments, foreign legal entities and domestic entities affiliated with either foreign governments or foreign legal entities. For the purposes of this paragraph, the term "foreign" means a country or jurisdiction outside of any state or territory of the United States;

(ee) Evidence of anticipated fundraising contributions, if claimed in the application; and (ff) A sound facilities plan, including backup or contingency plans if appropriate.

(5) In the case of an application to establish a charter school by converting an existing noncharter public school to charter school status, the request for proposals additionally shall require the applicant to demonstrate support for the proposed charter school conversion by a petition signed by a majority of teachers or a majority of parents of students in the existing noncharter public school, or by a majority vote of the local school board or, in the case of schools in districts under state conservatorship, by the State Board of Education.

(6) In the case of a proposed charter school that intends to contract with an education service provider for substantial educational services, management services or both types of services, the request for proposals additionally shall require the applicant to:

(a) Provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(b) Provide a term sheet setting forth: the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff and the education service provider; the scope of services and resources to be provided by the education service provider; performance evaluation measures and timelines; the compensation structure, including clear identification of all fees to be paid to the education service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract;

(c) Disclose and explain any existing or potential conflicts of interest between the school governing board and proposed service provider or any affiliated business entities; and

(d) Background information, including proof of United States citizenship, on the principal individuals affiliated with the education service provider.

(7) In the case of a charter school proposal from an applicant that currently operates one or more schools in any state or nation, the request for proposals additionally shall require the applicant to provide evidence of past performance and current capacity for growth. The applicant shall be required to submit clear evidence that it has produced statistically significant gains in student achievement or consistently produced proficiency levels as measured on state achievement tests.

**HISTORY: Laws, 2013, ch. 497, § 8, eff from and after July 1, 2013.**

**Editor's Notes —** A former § 37-28-15 [Laws, 1997, ch. 584, § 8; reenacted without change, Laws, 2001, ch. 531, § 8; reenacted without change, Laws, 2004, ch. 576, § 8; reenacted without change, Laws, 2005, ch. 508, § 8; reenacted without change, Laws, 2007, ch. 543, § 8; Repealed by operation of law by former § 37-38-21, eff from and after July 1, 2009.] pertained to funding for charter schools.

## § 37-28-17. Purposes of charter application; approved charter application not to serve as charter contract.

(1) The following are the purposes of a charter application:

(a) To present the proposed charter school's academic and operational vision and plans;

(b) To demonstrate the applicant's capacities to execute the proposed vision and plans; and

(c) To provide the authorizer a clear basis for assessing the applicant's plans and capacities.

(2) An approved charter application may not serve as the school's charter contract.

**HISTORY: Laws, 2013, ch. 497, § 9, eff from and after July 1, 2013.**

**Editor's Notes** — A former § 37-28-17 [Laws, 1997, ch. 584, § 8; reenacted without change, Laws, 2001, ch. 531, § 8; reenacted without change, Laws, 2004, ch. 576, § 8; reenacted without change, Laws, 2005, ch. 508, § 8; reenacted without change, Laws, 2007, ch. 543, § 8; Repealed by operation of law by former § 37-38-21, eff from and after July 1, 2009.] pertained to employees of charter schools.

## § 37-28-19. Standards for authorizing charter school; review process.

(1) In reviewing and evaluating charter applications, the authorizer shall employ procedures, practices and criteria consistent with nationally recognized principles and standards for quality charter authorizing. The application review process must include thorough evaluation of each written charter application and in-person interview with the applicant group.

(2) In deciding whether to approve charter applications, the authorizer must:

(a) Grant charters only to applicants that have provided evidence of competence in each element of the authorizer's published approval criteria, and in the case of an applicant that currently operates one or more schools in any state or nation, clear evidence that the management or leadership team of the charter school or schools currently operated by the applicant has produced statistically significant gains in student achievement or consistently produced proficiency levels as measured on state achievement test;

(b) Base decisions on documented evidence collected through the application review process; and

(c) Follow charter-granting policies and practices that are transparent, based on merit and avoid conflicts of interest or any appearance thereof.

(3) Before the expiration of one hundred eighty (180) days after the filing of a charter application, the authorizer must approve or deny the charter application; however, an application submitted by a public historically black college or university (HBCU), in partnership with a national nonprofit public HBCU support organization, for a charter school to be operated on or near the campus of the HBCU must be considered for expedited approval by the

authorizer. The authorizer shall adopt by resolution all charter approval or denial decisions in an open meeting of the authorizer board.

(4) An approval decision may include, if appropriate, reasonable conditions that the charter applicant must meet before a charter contract may be executed pursuant to Section 37-28-21.

(5) For a charter denial, the authorizer shall state clearly, for public record, its reasons for denial. A denied applicant may reapply subsequently with the authorizer.

(6) Before the expiration of ten (10) days after taking action to approve or deny a charter application, the authorizer shall provide a report to the applicant. The report must include a copy of the authorizer's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the procedural requirements and application elements set forth in this chapter.

**HISTORY: Laws, 2013, ch. 497, § 10, eff from and after July 1, 2013.**

**Editor's Notes —** A former § 37-28-19 [Laws, 1997, ch. 584, § 10; reenacted without change, Laws, 2001, ch. 531, § 10; reenacted without change, Laws, 2004, ch. 576, § 10; reenacted without change, Laws, 2005, ch. 508, § 10; reenacted without change, Laws, 2007, ch. 543, § 10; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to the State Board of Education report to the Legislature on the status of the charter school program and provided the requisite contents of the report.

## § 37-28-21. Initial charter term; charter contract.

(1) The authorizer shall grant an initial charter to each qualified applicant for a term of five (5) operating years. The term of the charter shall commence on the charter school's first day of operation. An approved charter school may delay its opening for one (1) school year in order to plan and prepare for the school's opening. If the school requires an opening delay of more than one (1) school year, the school must request an extension from the authorizer. The authorizer may grant or deny the extension depending on the particular school's circumstances.

(2)(a) The authorizer and the governing board of the approved charter school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the charter school will be judged and the administrative relationship between the authorizer and charter school, including each party's rights and duties. The performance expectations and measures set forth in the charter contract must include, but need not be limited to, applicable federal and state accountability requirements. The performance provisions may be refined or amended by mutual agreement after the charter school is operating and has collected baseline achievement data for its enrolled students.

(b) The charter contract must be signed by the chairman of the authorizer board and the president of the charter school's governing board.

(c) A charter school may not commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the authorizer board.

(3) The authorizer may establish reasonable preopening requirements or conditions to monitor the start-up progress of a newly approved charter school and to ensure that the school is prepared to open smoothly on the date agreed and that the school meets all building, health, safety, insurance and other legal requirements before the school's opening.

**HISTORY: Laws, 2013, ch. 497, § 11, eff from and after July 1, 2013.**

**Editor's Notes** — A former § 37-28-21 [Laws, 1997, ch. 584, § 11; Laws, 2004, ch. 576, § 11; reenacted and amended, Laws, 2005, ch. 508, § 11; Laws, 2007, ch. 543, § 11; Repealed by operation of law by former § 37-28-21, eff from and after July 1, 2009.] pertained to the repeal of §§ 37-28-1 through 37-28-21, effective from and after July 1, 2009.

## § 37-28-23. Charter school enrollment; lottery for selection of students if capacity is insufficient to enroll all students.

(1) A charter school must be open to:

(a) Any student residing in the geographical boundaries of the school district in which the charter school is located; and

(b) Any student who resides in the geographical boundaries of a school district that was rated "C," "D" or "F" at the time the charter school was approved by the authorizer board, or who resides in the geographical boundaries of a school district rated "C," or "D" or "F" at the time the student enrolls.

(2) A school district may not require any student enrolled in the school district to attend a charter school.

(3) Except as otherwise provided under subsection (8)(d) of this section, a charter school may not limit admission based on ethnicity, national origin, religion, gender, income level, disabling condition, proficiency in the English language, or academic or athletic ability.

(4) A charter school may limit admission to students within a given age group or grade level, including pre-kindergarten students, and may be organized around a special emphasis, theme or concept as stated in the school's application.

(5) The underserved student composition of a charter school's enrollment collectively must reflect that of students of all ages attending the school district in which the charter school is located, to be defined for the purposes of this chapter as being at least eighty percent (80%) of that population. If the underserved student composition of an applicant's or charter school's enrollment is less than eighty percent (80%) of the enrollment of students of all ages in the school district in which the charter school is located, despite the school's best efforts, the authorizer must consider the applicant's or charter school's recruitment efforts and the underserved student composition of the applicant pool in determining whether the applicant or charter school is operating in a

nondiscriminatory manner. A finding by the authorizer that a charter school is operating in a discriminatory manner justifies the revocation of a charter.

(6) A charter school must enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level or building.

(7) If capacity is insufficient to enroll all students who wish to attend the school based on initial application, the charter school must select students through a lottery.

(8)(a) Any noncharter public school or part of a noncharter public school converting to a charter school shall adopt and maintain a policy giving an enrollment preference to students who reside within the former attendance area of that public school. If the charter school has excess capacity after enrolling students residing within the former attendance area of the school, students outside of the former attendance area of the school, but within the geographical boundaries of the school district in which the charter school is located, are eligible for enrollment. If the number of students applying for admission exceeds the capacity of a program, class, grade level or building of the charter school, the charter school must admit students on the basis of a lottery.

(b) A charter school must give an enrollment preference to students enrolled in the charter school during the preceding school year and to siblings of students already enrolled in the charter school. An enrollment preference for returning students excludes those students from entering into a lottery.

(c) A charter school may give an enrollment preference to children of the charter school's applicant, governing board members and full-time employees, so long as those children constitute no more than ten percent (10%) of the charter school's total student population.

(d) A charter school shall give an enrollment preference to underserved children as defined in Section 37-28-5 to ensure the charter school meets its required underserved student composition.

(e) This section does not preclude the formation of a charter school whose mission is focused on serving students with disabilities, students of the same gender, students who pose such severe disciplinary problems that they warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend the school, the charter school must select students through a lottery.

**HISTORY: Laws, 2013, ch. 497, § 12; Laws, 2016, ch. 420, § 2, eff from and after July 1, 2016.**

## § 37-28-25. Charter school credits to be accepted by another public school upon transfer of student from charter school to public school.

If a student previously enrolled in a charter school enrolls in another public school in this state, the student's new school must accept credits earned by the student in courses or instructional programs at the charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other public schools.

**HISTORY: Laws, 2013, ch. 497, § 13, eff from and after July 1, 2013.**

## § 37-28-27. School districts required to provide information about charter schools as enrollment option.

A school district must provide or publicize to parents and the general public information about charter schools as an enrollment option within the district to the same extent and through the same means that the district provides and publicizes information about noncharter public schools in the district.

**HISTORY: Laws, 2013, ch. 497, § 14, eff from and after July 1, 2013.**

## § 37-28-29. Charter contract to include performance framework; performance standards used to guide authorizer's charter school evaluations; annual performance targets.

(1) The performance provisions within a charter contract must be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorizer's evaluations of the charter school. The performance framework must include indicators, measures and metrics, at a minimum, for the following:

(a) Student academic proficiency;

(b) Student academic growth;

(c) Achievement gaps in both proficiency and growth between major student subgroups;

(d) Attendance;

(e) Recurrent enrollment from year to year;

(f) In-school and out-of-school suspension rates and expulsion rates;

(g) For charter high schools, postsecondary readiness, including the percentage of graduates submitting applications to postsecondary institutions, high school completion, postsecondary admission and postsecondary enrollment or employment;

(h) Financial performance and sustainability; and

(i) Board performance and stewardship, including compliance with all applicable laws, regulations and terms of the charter contract.

(2) The charter contract of each charter school serving Grades 9-12 must include a provision ensuring that graduation requirements meet or exceed those set by the Mississippi Department of Education for a regular high school diploma. Nothing in this section shall preclude competency-based satisfaction of graduation requirements.

(3) Annual performance targets must be set by each charter school in conjunction with the authorizer and must be designed to help each school meet applicable federal, state and authorizer expectations.

(4) The performance framework must allow the inclusion of additional rigorous, valid and reliable indicators proposed by a charter school to augment external evaluations of its performance; however, the authorizer must approve the quality and rigor of any indicators proposed by a charter school, which indicators must be consistent with the purposes of this chapter.

(5) The performance framework must require the disaggregation of all student performance data by major student subgroups (gender, race, poverty status, special education status, English learner status and gifted status).

(6) The authorizer shall collect, analyze and report all data from state assessments in accordance with the performance framework for each charter school. Multiple schools overseen by a single governing board must report their performance as separate, individual schools, and each school must be held independently accountable for its performance.

(7) Information needed by the authorizer from the charter school governing board for the authorizer's reports must be required and included as a material part of the charter contract.

**HISTORY: Laws, 2013, ch. 497, § 15; Laws, 2016, ch. 420, § 3, eff from and after July 1, 2016.**

## § 37-28-31. Annual review of charter school performance and legal compliance; performance report; charter schools to be given opportunity to remedy problems.

(1) The authorizer shall monitor annually the performance and legal compliance of each charter school it oversees, including collecting and analyzing data to support the school's evaluation according to the charter contract. The authorizer may conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this chapter, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this chapter, adhere to the terms of the charter contract and do not unduly inhibit the autonomy granted to charter schools.

(2) As part of its annual report to the Legislature, the authorizer shall publish and provide a performance report for each charter school it oversees in accordance with the performance framework set forth in the charter contract. The report must be made available to the public at the same time as it is submitted to the Legislature. The authorizer may require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.

(3) If a charter school's performance or legal compliance is unsatisfactory, the authorizer shall notify promptly the charter school of the problem and provide reasonable opportunity for the school to remedy the problem unless the problem warrants revocation, in which case the revocation timeframes will apply.

(4) The authorizer may take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school's performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified timeframe.

**HISTORY: Laws, 2013, ch. 497, § 16, eff from and after July 1, 2013.**

## § 37-28-33. Renewal, nonrenewal or revocation of charter.

(1) A charter may be renewed for successive five-year terms of duration. The authorizer may grant renewal with specific conditions for necessary improvements to a charter school and may lessen the renewal term based on the performance, demonstrated capacities and particular circumstances of each charter school.

(2) Before September 30, the authorizer shall issue a charter school performance report and charter renewal application guidance to any charter school whose charter will expire the following year. The performance report must summarize the charter school's performance record to date, based on the data required by this chapter and the charter contract, and must provide notice of any weaknesses or concerns perceived by the authorizer which may jeopardize the charter school's position in seeking renewal if not timely rectified. The charter school must respond and submit any corrections or clarifications for the performance report within ninety (90) days after receiving the report.

(3) The charter renewal application guidance must provide, at a minimum, an opportunity for the charter school to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(b) Describe improvements undertaken or planned for the school; and

(c) Detail the school's plans for the next charter term.

(4) The charter renewal application guidance must include or refer explicitly to the criteria that will guide the authorizer's renewal decision, which must be based on the performance framework set forth in the charter contract and consistent with this chapter.

(5) Before February 1, the governing board of a charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the charter renewal application guidance issued by the authorizer. The authorizer shall adopt a resolution ruling on the renewal application no later than ninety (90) days after the filing of the renewal application.

(6) In making each charter renewal decision, the authorizer must:

(a) Ground its decision in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making the renewal decision is available to the school and the public; and

(c) Provide a public report summarizing the evidence that is the basis for the renewal decision.

(7) A charter contract must be revoked at any time or not renewed if the authorizer determines that the charter school has done any of the following or otherwise failed to comply with the provisions of this chapter:

(a) Committed a material and substantial violation of any of the terms, conditions, standards or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management; or

(d) Substantially violated any material provision of law which is applicable to the charter school.

(8) The authorizer shall develop revocation and nonrenewal processes that:

(a) Provide the governing board of a charter school with a timely notification of the prospect of revocation or nonrenewal and of the reasons for such possible closure;

(b) Allow the governing board a reasonable amount of time in which to prepare a response;

(c) Provide the governing board with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;

(d) Allow the governing board access to representation by counsel and to call witnesses on the school's behalf;

(e) Permit the recording of such proceedings; and

(f) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the governing board.

(9) Notwitstanding any provision to the contrary, the authorizer may not renew the charter of any charter school that, during the school's final operating year under the term of the charter contract, is designated an "F" school under the school accreditation rating system.

(10) If the authorizer revokes or does not renew a charter, the authorizer must state clearly, in a resolution of adopted by the authorizer board, the reasons for the revocation or nonrenewal.

(11) Within ten (10) days after taking action to renew, not renew or revoke a charter, the authorizer shall provide a report to the charter school. The report must include a copy of the authorizer board's resolution setting forth the action taken, reasons for the board's decision and assurances as to compliance with all of the requirements set forth in this chapter.

**HISTORY: Laws, 2013, ch. 497, § 17, eff from and after July 1, 2013.**

## § 37-28-35. Closure of charter; charter school closure protocol; disposition of unspent funds and assets.

(1) Before implementing a charter school closure decision, the authorizer must develop a charter school closure protocol to ensure timely notification to

parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property and assets in accordance with the requirements of this chapter. The protocol must specify tasks, timelines and responsible parties, including delineating the respective duties of the school and the authorizer. If a charter school is to be closed for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.

(2) If a charter school closes, all unspent government funds, unspent earnings from those funds and assets purchased with government funds must revert to the local school district in which the charter school is located. Unless otherwise provided for in the charter or a debt instrument, unspent funds from nongovernmental sources, unspent earnings from those funds, assets purchased with those funds and debts of the school must revert to the nonprofit entity created to operate the school and may be disposed of according to applicable laws for nonprofit corporations.

**HISTORY: Laws, 2013, ch. 497, § 18, eff from and after July 1, 2013.**

## § 37-28-37. Annual report on status of charter schools to governor and legislature.

(1) Before October 1 of each year, beginning in the year that the state has had at least one (1) charter school operating for a full school year, the Mississippi Charter School Authorizer Board shall issue to the Governor, Legislature, State Board of Education and the public an annual report on the state's charter schools for the preceding school year. The report must include a comparison of the performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in the school district in which a charter school is located. In addition, the report must include the authorizer's assessment of the successes, challenges and areas for improvement in meeting the purposes of this chapter. The report also must include an assessment on whether the number and size of operating charter schools are sufficient to meet demand, as calculated according to admissions data and the number of students denied enrollment based on lottery results. The report due from the authorizer under this section must be coordinated with reports due from charter school governing boards, as near as possible, to decrease or eliminate duplication.

(2) The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall prepare an annual report assessing the sufficiency of funding for charter schools, the efficacy of the state formula for authorizer funding, and any suggested changes in state law or policy necessary to strengthen the state's charter schools.

**HISTORY: Laws, 2013, ch. 497, § 19, eff from and after July 1, 2013.**

## § 37-28-39. Charter school and certain service providers to be nonprofit education organization; charter school to function as local educational agency.

(1) Notwithstanding any provision of law to the contrary, to the extent that any provision of this chapter is inconsistent with any other state or local law, rule or regulation, the provisions of this chapter govern and are controlling.

(2) A charter school and any education service provider which provides comprehensive management for a charter school must be a nonprofit education organization.

(3) A charter school is subject to all federal laws and authorities specified in this chapter or agreed upon with the authorizer in the charter contract, where such contracting is consistent with applicable laws, rules and regulations.

(4) To the extent approved by the authorizer, a charter contract may consist of one or more schools. Each charter school that is part of a charter contract must be separate and distinct from any other charter school.

(5) A single governing board may hold one or more charter contracts.

(6) A charter school must function as a local educational agency, and as such, a charter school is responsible for meeting the requirements of local educational agencies under applicable federal laws, including those relating to special education, receipt of funds and compliance with funding requirements. Status as a local educational agency, however, does not preclude a charter school from developing, by mutual agreement or formal contract, links with the local school district for services, resources and programs.

**HISTORY: Laws, 2013, ch. 497, § 20, eff from and after July 1, 2013.**

## § 37-28-41. Charter school powers.

A charter school may exercise those powers necessary for carrying out the terms of its charter contract, including the following powers:

(a) To receive and disburse funds authorized by law for school purposes;

(b) To secure appropriate insurance and to enter into contracts and leases;

(c) To contract with an education service provider for the management and operation of the charter school so long as the school's governing board retains oversight authority over the school;

(d) To solicit and accept any gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;

(e) To acquire real property for use as its facility or facilities, from public or private sources; and

(f) To sue and be sued in its own name.

**HISTORY: Laws, 2013, ch. 497, § 21, eff from and after July 1, 2013.**

## § 37-28-43. Prohibition against discrimination; prohibition against charging tuition; transportation plan; virtual courses.

(1) A charter school may not discriminate against any person on the basis of race, creed, color, sex, disability, national origin or any other category that would be unlawful if done by a noncharter public school.

(2) A charter school may not engage in any sectarian practices in its educational program, admissions or employment policies or operations.

(3) A charter school may not discriminate against any student on the basis of national origin, minority status or limited proficiency in English. Consistent with federal civil rights laws, charter schools must provide limited English proficient students with appropriate services designed to teach them English and the general curriculum.

(4) A charter school may not charge tuition.

(5) The terms of each charter school must include a transportation plan for students attending the charter school.

(6) Subject to the approval of the authorizer, a charter school may contract with an accredited online course provider for the delivery of virtual courses to students enrolled in the charter school.

(7) Except to the extent authorized under paragraph (c) of Section 37-28-41, the powers, obligations and responsibilities set forth in the charter contract may not be delegated or assigned by either party.

**HISTORY: Laws, 2013, ch. 497, § 22, eff from and after July 1, 2013.**

## § 37-28-45. Applicability of statutes, rules, regulations, policies, procedures, etc. that noncharter public schools are subject to; relation to other laws.

(1) Charter schools are subject to the same civil rights, health and safety requirements applicable to noncharter public schools in the state, except as otherwise specifically provided in this chapter.

(2) Charter schools are subject to the student assessment and accountability requirements applicable to noncharter public schools in the state; however, this requirement does not preclude a charter school from establishing additional student assessment measures that go beyond state requirements if the authorizer approves those measures.

(3) Although a charter school is geographically located within the boundaries of a particular school district and enrolls students who reside within the school district, the charter school may not be considered a school within that district under the purview of the school district's school board. The rules, regulations, policies and procedures established by the school board for the noncharter public schools that are in the school district in which the charter school is geographically located do not apply to the charter school unless otherwise required under the charter contract or any contract entered into between the charter school governing board and the local school board.

(4) Whenever the provisions of Title 37, Mississippi Code of 1972, relating to the elementary and secondary education of public school students establish a requirement for or grant authority to local school districts, their school boards and the schools within the respective school districts, the language "school districts," "school boards," "boards of trustees," "the schools within a school district," or any other similar phraseology does not include a charter school and the governing board of a charter school unless the statute specifically is made applicable to charter schools as well as noncharter public schools.

(5) A charter school is not subject to any rule, regulation, policy or procedure adopted by the State Board of Education or the State Department of Education unless otherwise required by the authorizer or in the charter contract.

(6) Charter schools are not exempt from the following statutes:

(a) Chapter 41, Title 25, Mississippi Code of 1972, which relate to open meetings of public bodies.

(b) Chapter 61, Title 25, Mississippi Code of 1972, which relate to public access to public records.

(c) Section 37-3-51, which requires notice by the district attorney of licensed school employees who are convicted of certain sex offenses.

(d) Section 37-3-53, which requires publication of the Mississippi Report Card by the State Board of Education.

(e) Section 37-11-18, which requires the automatic expulsion of a student possessing a weapon or controlled substance on educational property.

(f) Section 37-11-18.1, which requires expulsion of certain habitually disruptive students.

(g) Section 37-11-19, which requires suspension or expulsion of a student who damages school property.

(h) Section 37-11-20, which prohibits acts of intimidation intended to keep a student from attending school.

(i) Section 37-11-21, which prohibits parental abuse of school staff.

(j) Section 37-11-23, which prohibits the willful disruption of school and school meetings.

(k) Sections 37-11-29 and 37-11-31, which relate to reporting requirements regarding unlawful or violent acts on school property.

(*l*) Section 37-11-67, which prohibits bullying or harassing behavior in public schools.

(m) Section 37-13-3, which prohibits doctrinal, sectarian or denominational teaching in public schools.

(n) Sections 37-13-5 and 37-13-6, which require the flags of the United States and the State of Mississippi to be displayed near the school building.

(o) Section 37-13-63(1), which prescribes the minimum number of days which public schools must be kept in session during a scholastic year.

(p) Section 37-13-91, which is the Mississippi Compulsory School Attendance Law.

(q) Section 37-13-171(2) and (4), which requires any course containing sex-related education to include instruction in abstinence-only or abstinence-plus education.

(r) Section 37-13-173, which requires notice to parents before instruction on human sexuality is provided in public classrooms.

(s) Section 37-13-193, which relates to civil rights and human rights education in the public schools.

(t) Sections 37-15-1 and 37-15-3, which relate to the maintenance and transfer of permanent student records in public schools.

(u) Section 37-15-6, which requires the State Department of Education to maintain a record of expulsions from the public schools.

(v) Section 37-15-9, which establishes minimum age requirements for kindergarten and first grade enrollment in public schools.

(w) Section 37-15-11, which requires a parent, legal guardian or custodian to accompany a child seeking enrollment in a public school.

(x) Sections 37-16-1, 37-16-3, 37-16-4 and 37-16-9, which relate to the statewide assessment testing program.

(y) Section 37-18-1, which establishes the Superior-Performing Schools Program and Exemplary Schools Program to recognize public schools that improve.

**HISTORY: Laws, 2013, ch. 497, § 23, eff from and after July 1, 2013.**

## § 37-28-47. Qualifications of charter school employees; applicability of Education Employment Procedures Law.

(1)(a) Charter schools must comply with applicable federal laws, rules and regulations regarding the qualification of teachers and other instructional staff. No more than twenty-five percent (25%) of teachers in a charter school may be exempt from state teacher licensure requirements. Administrators of charter schools are exempt from state administrator licensure requirements. However, teachers and administrators must have a bachelor's degree as a minimum requirement, and teachers must have demonstrated subject-matter competency. Within three (3) years of a teacher's employment by a charter school, the teacher must have, at a minimum, alternative licensure approved by the Commission on Teacher and Administrator Education, Certification and Licensure and Development.

(b) A charter school may not staff positions for teachers, administrators, ancillary support personnel or other employees by utilizing or otherwise relying on nonimmigrant foreign worker visa programs. However, a charter school may submit a request to the authorizer for an exception allowing the employment of a nonimmigrant foreign worker before the worker is employed. The authorizer may grant permission for the employment of the nonimmigrant foreign worker only if the charter school makes a satisfactory showing of efforts to recruit lawful permanent residents of the United States to fill the position and a lack of qualified applicants to fill the position.

(2) Employees in charter schools must have the same general rights and privileges as other public school employees, except such employees are not:

(a) Covered under the Education Employment Procedures Law (Section 37-9-103); and

(b) Subject to the state salary requirements prescribed in Section 37-19-7.

(3) For the purpose of eligibility for participation in the Public Employees' Retirement System, a public charter school is considered to be a political subdivision of the state. Employees in public charter schools are eligible for participation in other benefits programs if the public charter school governing board chooses to participate.

**HISTORY: Laws, 2013, ch. 497, § 24; Laws, 2016, ch. 420, § 4, eff from and after July 1, 2016.**

## § 37-28-49. Criminal history record checks and fingerprinting requirements; termination of charter school employee for certain acts.

(1) Charter school teachers and other school personnel, as well as members of the governing board and any education service provider with whom a charter school contracts, are subject to criminal history record checks and fingerprinting requirements applicable to employees of other public schools. The authorizer shall require that current criminal records background checks and current child abuse registry checks are obtained, and that the criminal record information and registry checks are on file at the charter school for any new hires applying for employment. In order to determine an applicant's suitability for employment, the applicant must be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints must be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Under no circumstances may a member of the Mississippi Charter School Authorizer Board, member of the charter school governing board or any individual other than the subject of the criminal history record checks disseminate information received through the checks except as may be required to fulfill the purposes of this section. The determination whether the applicant has a disqualifying crime, as set forth in subsection (2) of this section, must be made by the appropriate state or federal governmental authority, which must notify the charter school whether a disqualifying crime exists.

(2) If the fingerprinting or criminal record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(g), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault which has not been reversed on appeal or for which a pardon has not been granted, the new hire is not eligible to be employed at the charter school. However, the charter school, in its discretion, may allow any applicant aggrieved by the employment decision under this section to show mitigating circumstances that exist and may allow, subject to the approval of the Mississippi Charter School Authorizer Board, the

new hire to be employed at the school. The authorizer may approve the employment depending on the mitigating circumstances, which may include, but need not be limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; and (f) other evidence demonstrating the ability of the person to perform the employment responsibilities competently and that the person does not pose a threat to the health or safety of children.

(3) No charter school, charter school employee, member of the charter school governing board, the Mississippi Charter School Authorizer Board or member or employee of the Mississippi Charter School Authorizer Board employee may be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this section.

(4) A charter school shall terminate any teacher or administrator for committing one or more of the following acts:

(a) Engaging in unethical conduct relating to an educator-student relationship as identified by the Mississippi Charter School Authorizer Board;

(b) Fondling a student as described in Section 97-5-23 or engaging in any type of sexual involvement with a student as described in Section 97-3-95; or

(c) Failure to report sexual involvement of a charter school employee with a student as required by Section 97-5-24.

**HISTORY: Laws, 2013, ch. 497, § 25, eff from and after July 1, 2013.**

## § 37-28-51. Charter schools eligible to participate in state- or district-sponsored athletic and academic interscholastic activities.

A charter school is eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships and recognition programs for students, educators, administrators and schools to the same extent as noncharter public schools.

**HISTORY: Laws, 2013, ch. 497, § 26, eff from and after July 1, 2013.**

## § 37-28-53. Charter schools required to certify enrollment, average daily attendance and certain additional information on annual basis.

(1) Each charter school shall certify annually to the State Department of Education its student enrollment, average daily attendance and student participation in the national school lunch program, special education, vocational education, gifted education, alternative school program and federal programs in the same manner as school districts.

(2) Each charter school shall certify annually to the school board of the school district in which the charter school is located the number of enrolled charter school students residing in the school district.

**HISTORY: Laws, 2013, ch. 497, § 27, eff from and after July 1, 2013.**

## § 37-28-55. Charter school funding; adequate education program payments; local funding; federal and state categorical aid program monies; state transportation funding.

(1)(a) The State Department of Education shall make payments to charter schools for each student in average daily attendance at the charter school equal to the state share of the adequate education program payments for each student in average daily attendance at the school district in which the charter school is located. In calculating the local contribution for purposes of determining the state share of the adequate education program payments, the department shall deduct the pro rata local contribution of the school district in which the student resides, to be determined as provided in Section 37-151-7(2)(a).

(b) Payments made pursuant to this subsection by the State Department of Education must be made at the same time and in the same manner as adequate education program payments are made to school districts under Sections 37-151-101 and 37-151-103. Amounts payable to a charter school must be determined by the State Department of Education. Amounts payable to a charter school over its charter term must be based on the enrollment projections set forth over the term of the charter contract. Such projections must be reconciled with the average daily attendance using months two (2) and three (3) ADA for the current year for which adequate education program funds are being appropriated and any necessary adjustments must be made to payments during the school's following year of operation.

(2) For students attending a charter school located in the school district in which the student resides, the school district in which a charter school is located shall pay directly to the charter school an amount for each student enrolled in the charter school equal to the ad valorem tax receipts and in-lieu payments received per pupil for the support of the local school district in which the student resides. The pro rata ad valorem receipts and in-lieu receipts to be transferred to the charter school shall include all levies for the support of the local school district under Sections 37-57-1 (local contribution to the adequate education program) and 37-57-105 (school district operational levy) and may not include any taxes levied for the retirement of the local school district's bonded indebtedness or short-term notes or any taxes levied for the support of vocational-technical education programs. The amount of funds payable to the charter school by the school district must be based on the previous year's enrollment data and ad valorem receipts and in-lieu receipts of the local school

district in which the student resides. The pro rata amount must be calculated by dividing the local school district's months one (1) through nine (9) average daily membership into the total amount of ad valorem receipts and in-lieu receipts, as reported to the State Department of Education by the local school district. The local school district shall pay an amount equal to this pro rata amount multiplied by the number of students enrolled in the charter school, based on the charter school's end of first month enrollment for the current school year. The amount must be paid by the school district to the charter school before January 16 of the current fiscal year. If the local school district does not pay the required amount to the charter school before January 16, the State Department of Education shall reduce the local school district's January transfer of Mississippi Adequate Education Program funds by the amount owed to the charter school and shall redirect that amount to the charter school. Any such payments made under this subsection (2) by the State Department of Education to a charter school must be made at the same time and in the same manner as adequate education program payments are made to school districts under Sections 37-151-101 and 37-151-103.

(3) For students attending a charter school located in a school district in which the student does not reside, the State Department of Education shall pay to the charter school in which the student is enrolled an amount as follows: the pro rata ad valorem receipts and in-lieu payments per pupil for the support of the local school district in which the student resides under Sections 37-57-1 (local contribution to the adequate education program) and 37-57-105 (school district operational levy), however, not including any taxes levied for the retirement of the local school district's bonded indebtedness or short-term notes or any taxes levied for the support of vocational-technical education programs. The amount of funds payable to the charter school by the school district must be based on the previous year's enrollment data and ad valorem receipts and in-lieu receipts of the local school district in which the student resides. The pro rata amount must be calculated by dividing the local school district's months one (1) through nine (9) average daily membership into the total amount of ad valorem receipts and in-lieu receipts, as reported to the State Department of Education by the transferor local school district. The payable amount shall be equal to this pro rata amount multiplied by the number of students enrolled in the charter school, based on the charter school's end of first month enrollment for the current school year. The State Department of Education shall reduce the school district's January transfer of Mississippi Adequate Education Program funds by the amount owed to the charter school and shall redirect that amount to the charter school. Any such payments made under this subsection (3) by the State Department of Education to a charter school must be made at the same time and in the same manner as adequate education program payments are made to school districts under Sections 37-151-101 and 37-151-103.

(4)(a) The State Department of Education shall direct the proportionate share of monies generated under federal and state categorical aid programs, including special education, vocational, gifted and alternative school programs, to charter schools serving students eligible for such aid. The department shall ensure that charter schools with rapidly expanding enrollments are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars. Each charter school that serves students who may be eligible to receive services provided through such programs shall comply with all reporting requirements to receive the aid.

(b) A charter school shall pay to a local school district any federal or state aid attributable to a student with a disability attending the charter school in proportion to the level of services for that student which the local school district provides directly or indirectly.

(c) Subject to the approval of the authorizer, a charter school and a local school district may negotiate and enter into a contract for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent (5%) of the local school district's total budget for providing special education services. The reserve may be used by the local school district only to offset excess costs of providing services to students with disabilities enrolled in the charter school.

(5)(a) The State Department of Education shall disburse state transportation funding to a charter school on the same basis and in the same manner as it is paid to school districts under the adequate education program.

(b) A charter school may enter into a contract with a school district or private provider to provide transportation to the school's students.

**HISTORY: Laws, 2013, ch. 497, § 28; Laws, 2015, ch. 428, § 1; Laws, 2016, ch. 420, § 5, eff from and after July 1, 2016.**

## § 37-28-57. Annual financial audit.

(1) A charter school must adhere to generally accepted accounting principles.

(2) A charter school shall have its financial records audited annually, at the end of each fiscal year, either by the State Auditor or by a certified public accountant approved by the State Auditor. However, a certified public accountant may not be selected to perform the annual audit of a charter school if that accountant previously has audited the charter school for more than three (3) consecutive years. Certified public accountants must be selected in a manner determined by the State Auditor. The charter school shall file a copy of each audit report and accompanying management letter with the authorizer before October 1.

**HISTORY: Laws, 2013, ch. 497, § 29; Laws, 2016, ch. 420, § 6, eff from and after July 1, 2016.**

## § 37-28-59. Monies remaining in charter school's accounts at end of budget year to be used during subsequent budget years; authorization to accept gifts, grants, etc.; disclosure of funds from private and foreign sources.

(1) Any monies received by a charter school from any source remaining in the charter school's accounts at the end of a budget year must remain in the charter school's accounts for use by the charter school during subsequent budget years.

(2) Nothing in this chapter may be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a charter school. The governing board of a charter school may accept gifts, donations and grants of any kind made to the charter school and may expend or use such gifts, donations and grants in accordance with the conditions prescribed by the donor; however, a gift, donation or grant may not be accepted if it is subject to a condition that is contrary to any provision of law or term of the charter contract.

(3) A charter school must disclose publicly all sources of private funding and all funds received from foreign sources, including gifts from foreign governments, foreign legal entities and domestic entities affiliated with either foreign governments or foreign legal entities. For the purposes of this subsection, the term "foreign" means a country or jurisdiction outside of any state or territory of the United States.

**HISTORY: Laws, 2013, ch. 497, § 30, eff from and after July 1, 2013.**

## § 37-28-61. Right of first refusal to purchase vacant public school facilities; public entities authorized to provide space to charters in their facilities under preexisting zoning and land use designations.

(1) A charter school has a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or unused portions of a public school facility or property in the school district in which the charter school is located if the school district decides to sell or lease the public school facility or property. If a conversion charter school application is successful, the local school district owning the conversion charter school's facility must offer to lease or sell the building to the conversion charter school at or below fair market value.

(2) A charter school may negotiate and contract at or below fair market value with a school district, state institution of higher learning, public community or junior college, or any other public or for-profit or nonprofit private entity for the use of a facility for a school building.

(3) Public entities, including, but not limited to, libraries, community service organizations, museums, performing arts venues, theatres, cinemas,

churches, community and junior colleges, colleges and universities, may provide space to charter schools within their facilities under their preexisting zoning and land use designations.

**HISTORY: Laws, 2013, ch. 497, § 31; Laws, 2016, ch. 420, § 7, eff from and after July 1, 2016.**

## § 37-28-63. Repealed.

Repealed by Laws, 2015, ch. 420, § 11, effective July 1, 2016.

§ 37-28-63. [Laws, 2013, ch. 497, § 93, eff from and after July 1, 2013.]

**Editor's Notes** — Former § 37-28-63 was the repealer for §§ 37-28-1 through 37-28-61.

# CHAPTER 29.

# JUNIOR COLLEGES

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## IN GENERAL

Sec.
37-29-1. Creation, establishment, maintenance and operation of community colleges authorized; types of instruction to be offered; early admission program.
37-29-3. Official seal.
37-29-5. Title to lands; buildings and improvements.

### § 37-29-1. Creation, establishment, maintenance and operation of community colleges authorized; types of instruction to be offered; early admission program.

(1) The creation, establishment, maintenance and operation of community colleges is authorized. Community colleges may admit students if they have earned one (1) unit less than the number of units required for high school graduation established by State Board of Education policy or have earned a High School Equivalency Diploma in courses correlated to those of senior colleges or professional schools. Subject to the provisions of Section 75-76-34, they shall offer, without limitation, education and training preparatory for occupations such as agriculture, industry of all kinds, business, homemaking and for other occupations on the semiprofessional and vocational-technical level. They may offer courses and services to students regardless of their previous educational attainment or further academic plans.

(2) The boards of trustees of the community college districts are authorized to establish an early admission program under which applicants having a minimum ACT composite score of twenty-six (26) or the equivalent SAT score

may be admitted as full-time college students if the principal or guidance counselor of the student recommends in writing that it is in the best educational interest of the student. Such recommendation shall also state that the student's age will not keep him from being a successful full-time college student. Students admitted in the early admission program shall not be counted for adequate education program funding purposes in the average daily attendance of the school district in which they reside, and transportation required by a student to participate in the early admission program shall be the responsibility of the parents or legal guardians of the student. Grades and college credits earned by students admitted to the early admission program shall be recorded on the college transcript at the community college where the student attends classes, and may be released to another institution or used for college graduation requirements only after the student has successfully completed one (1) full semester of course work.

(3) The community colleges shall provide, through courses or other acceptable educational measures, the general education necessary to individuals and groups which will tend to make them capable of living satisfactory lives consistent with the ideals of a democratic society.

**HISTORY: Codes, 1942, § 6475-01; Laws, 1950, ch. 369, § 1; Laws, 1987, ch. 320; Laws, 1996, ch. 327, § 1; Laws, 1998, ch. 398, § 1; Laws, 1998, ch. 578, § 1; Laws, 2002, ch. 361, § 1; Laws, 2011, ch. 511, § 3; Laws, 2013, ch. 327, § 4; Laws, 2014, ch. 398, § 4, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Section 1 of ch. 398, Laws of 1998, effective July 1, 1998 (approved March 17, 1998), amended this section. Section 1 of ch. 578, Laws of 1998, effective July 1, 1998 (approved April 17, 1998), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 578, Laws of 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Cross References —** Adult education, see § 37-35-1 et seq.

Inclusion of public junior colleges in small business consortium, see § 57-10-157.

## JUDICIAL DECISIONS

**1. In general.**

A plan for desegregating the schools of Coahoma County, Mississippi, would be adopted which would assign students in the first eight grades to neighborhood schools, after which the district would be zoned for the assignment of students in grades 9 through 12 to the county high school operated by the school district, and to the county agricultural high school operated by the junior college district. Taylor v. Coahoma County School Dist., 330 F. Supp. 174, 1970 U.S. Dist. LEXIS 11054 (N.D. Miss. 1970), aff'd, 444 F.2d 221, 1971 U.S. App. LEXIS 9525 (5th Cir. Miss. 1971).

## OPINIONS OF THE ATTORNEY GENERAL

Most agricultural high schools have been subsumed into community college systems which administer them; therefore, members of community college board who operate agricultural high school are not required to attend training sessions required for school board members of local school districts; only agricultural high school operated by board of trustees independent of community college would be required to meet training requirements of Section 37-7-306. Bradley Sept. 9, 1993, A.G. Op. #93-0643.

A principal and/or guidance counselor may consider a student's ACT score, together with other factors they may deem relevant, when determining whether to recommend a particular student for participation in the dual enrollment program. Presley, June 9, 2004, A.G. Op. 04-0240.

### RESEARCH REFERENCES

**Law Reviews.**

Adams, Through the looking glass and what the Supreme Court finds there: the political setting of *United States v. Fordice*. 62 Miss. L. J. 263, Winter, 1993.

Connell, The road to *United States v. Fordice*: what is the duty of public colleges and universities in former de jure states to desegregate? 62 Miss. L. J. 285, Winter, 1993.

Dunaway and Mills, *United States v. Fordice*: A summary of the parties' arguments. 62 Miss. L. J. 361, Winter, 1993.

Davis, The quest for equal education in Mississippi: the implications of *United States v. Fordice*. 62 Miss. L. J. 405, Winter, 1993.

**Practice References.**

Education Law (Matthew Bender).

## § 37-29-3. Official seal.

Each junior college shall have an official seal to be impressed upon all instruments of the junior college requiring seal. Said seal may be in the form of a circle. Said seal shall imprint the name and location of the college and the words "Official Seal."

**HISTORY: Codes, 1942, § 6475-17; Laws, 1950, ch. 369, § 17.**

## § 37-29-5. Title to lands; buildings and improvements.

Title to lands may be acquired and buildings and other improvements may be erected thereon for the use and benefit of junior colleges. Title to all such property hereafter acquired shall be vested in the board of trustees and the trustees' successors in office.

Any board of supervisors or board of trustees of any municipal separate school district which presently holds title to the lands, buildings, and improvements of a junior college may convey title to same to the board of trustees and their successors in office of such junior college pursuant to a resolution of such board of supervisors or board of trustees of a municipal separate school district, duly adopted and spread on the minutes of said board of supervisors.

**HISTORY: Codes, 1942, § 6475-08; Laws, 1950, ch. 369, § 8.**

**Cross References** — Authority of municipalities and counties to purchase land or buildings for junior colleges, see § 37-29-267.

### OPINIONS OF THE ATTORNEY GENERAL

A community college may convey an easement over land under its jurisdiction to an individual in return for other land of equal or greater value upon such basis as the board of trustees finds acceptable. Bradley, May 3, 2002, A.G. Op. #02-0202.

## JUNIOR COLLEGE COMMISSION [REPEALED]

Sec.
37-29-11 through 37-29-17. Repealed.

### §§ 37-29-11 through 37-29-17. Repealed.

Repealed by 1986, ch. 434, § 17, eff from and after July 1, 1986 (became law on April 4, 1986, without Governor's signature).

§§ 37-29-11 through 37-29-15. [Codes, 1942, §§ 6475-21 to 6475-23; Laws, 1962, ch. 352, §§ 1-3]

§ 37-29-17. [Codes, 1942, §§ 6475-03, 6475-24; Laws, 1950, ch. 369, § 3; 1962, ch. 352, § 4]

**Editor's Notes** — Former Section 37-29-11 created the junior college commission and specified its membership.

Former Section 37-29-13 specified the qualifications of appointed members of the commission.

Former Section 37-29-15 provided for meetings of the commission and specified the compensation of the members.

Former Section 37-29-17 specified the powers and duties of the junior college commission.

## JUNIOR COLLEGE DISTRICTS

Sec.
37-29-31. Junior college districts created.
37-29-33. Property of existing institutions transferred to and vested in district trustees.
37-29-35. Repealed.
37-29-37. Continuation of operation of junior college lying in county bordering on the Mississippi River.
37-29-39. Continuation of Mississippi Gulf Coast Junior College District.

### § 37-29-31. Junior college districts created.

There are hereby created the following junior college districts comprising the entire counties therein named and having boundaries coinciding with the external boundaries thereof, each of which shall be separate juristic entities and bodies politic and corporate:

(a) East Central Junior College District shall be comprised of the counties of Leake, Neshoba, Newton, Scott and Winston.

(b) East Mississippi Junior College District shall be comprised of the counties of Clay, Kemper, Lauderdale, Lowndes, Noxubee and Oktibbeha.

(c) Hinds Junior College District shall be comprised of the counties of Hinds, Rankin, Warren and Claiborne.

(d) Holmes Junior College District shall be comprised of the counties of Attala, Carroll, Choctaw, Grenada, Holmes, Madison, Montgomery, Webster and Yazoo.

(e) Itawamba Junior College District shall be comprised of the counties of Chickasaw, Itawamba, Lee, Monroe and Pontotoc.

(f) Jones County Junior College District shall be comprised of the counties of Clarke, Covington, Greene, Jasper, Jones, Perry, Smith and Wayne.

(g) Mississippi Delta Junior College District shall be comprised of the counties of Bolivar, Humphreys, Issaquena, Leflore, Sharkey, Sunflower and Washington.

(h) Northeast Junior College District shall be comprised of the counties of Alcorn, Prentiss, Tippah, Tishomingo and Union.

(i) Northwest Junior College District shall be comprised of the counties of Benton, Calhoun, DeSoto, Lafayette, Marshall, Panola, Quitman, Tallahatchie, Tate, Tunica and Yalobusha.

(j) Pearl River Junior College District shall be comprised of the counties of Forrest, Hancock, Jefferson Davis, Lamar, Marion and Pearl River.

(k) Southwest Junior College District shall be comprised of the counties of Amite, Pike, Walthall and Wilkinson.

**HISTORY: Codes, 1942, § 6475-51; Laws, 1964, ch. 398, § 1; Laws, 1975, ch. 301, § 12; Laws, 1995, ch. 605, § 12, eff from and after July 1, 1995.**

**Cross References —** Duties and powers of superintendent of school districts in handling agricultural high school and junior college funds, see § 37-9-14.

Special provisions applicable to East Mississippi Junior College District, see § 37-29-65.

Creation of Mississippi Gulf Coast Junior College District, see § 37-29-401.

Creation of Copiah-Lincoln Junior College District, see § 37-29-451.

Creation of Meridian Junior College District, see § 37-29-501.

## § 37-29-33. Property of existing institutions transferred to and vested in district trustees.

Except as otherwise provided in Sections 37-29-1 through 37-29-273, all of the property belonging to the board of trustees of any existing junior college and all of the property belonging to any or all of the counties cooperating, as of July 1, 1964, in the existing junior colleges or the agricultural high schools and junior colleges located at the existing campuses and utilized or held for the present or future use and benefit of such junior colleges and/or agricultural high schools and junior colleges, shall be and the same is hereby transferred to and vested in the boards of trustees of the junior college districts created in Section 37-29-31.

**HISTORY: Codes, 1942, § 6475-52; Laws, 1964, ch. 398, § 2, eff from and after July 1, 1964.**

**Editor's Notes** — Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Laws of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Transfer of property to Mississippi Gulf Coast Junior College District, see § 37-29-403.

Transfer of property to Copiah-Lincoln Junior College District, see § 37-29-471.

Transfer of property to Meridian Junior College District, see § 37-29-503.

### OPINIONS OF THE ATTORNEY GENERAL

If streets are determined not to be dedicated city streets and are the property of a community college, then the provisions of Section 37-29-67 authorize the board of trustees to gate the streets for the protection and safety of students, guests, faculty and employees. Smith, Nov. 9, 2005, A.G. Op. 05-0566.

## § 37-29-35. Repealed.

Repealed by Laws, 1980, ch. 428, § 10, eff from and after passage (approved April 30, 1980).

[Codes, 1942, §§ 6475-12, 6475-65; Laws, 1950, ch. 369, § 12; Laws, 1964, ch. 398, § 15]

**Editor's Notes** — Former § 37-29-35 provided for the continuation of junior college districts operated by municipal separate school districts.

## § 37-29-37. Continuation of operation of junior college lying in county bordering on the Mississippi River.

(1) Notwithstanding the provisions of Sections 37-29-1 through 37-29-273 to the contrary, any existing publicly operated junior college, lying in and operated by a county bordering on the Mississippi River, may, in the discretion of the board of supervisors of such county, continue to operate said college under such terms and conditions as said board may deem necessary and requisite in the premises. The governing authorities of other counties and municipalities are authorized and empowered, in the discretion of said governing bodies, to appropriate funds for the support of said junior college.

(2) The provisions of the preceding subsection shall not impair nor abrogate the aforesaid county's obligations, duties, powers, and rights as a member county of the junior college district to which it is made a part by Section 37-29-31.

(3) All of the property and facilities of any existing junior college located outside of the boundaries of the county owning and operating the same shall be and the same are hereby transferred to and vested in the board of trustees of

the junior college district in which said county owning and operating said junior college is situated, and the board of trustees of said junior college district is authorized to continue the operation of said college under such terms and conditions as such board may deem necessary and requisite.

The governing authorities of other counties and municipalities lying outside of such junior college district are authorized and empowered, in the discretion of their governing bodies, to levy taxes and to appropriate funds for the support of such junior college.

**HISTORY: Codes, 1942, § 6475-66; Laws, 1964, ch. 398, § 16; Laws, 1964, 1st Ex Sess, ch. 29, eff from and after passage (approved July 14, 1964).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Laws of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

## § 37-29-39. Continuation of Mississippi Gulf Coast Junior College District.

It is expressly provided that nothing in Sections 37-29-1 through 37-29-273 shall be construed as affecting a junior college district heretofore established under authority of Sections 37-29-401 through 37-29-437.

**HISTORY: Codes, 1942, § 6475-68; Laws, 1964, ch. 398, § 18, eff from and after July 1, 1964.**

**Editor's Notes —** Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Laws of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Duties and powers of superintendent of school district, see § 37-9-14.

## PRESIDENT AND BOARD OF TRUSTEES

Sec.
37-29-61. President; selection and term.
37-29-63. Powers of the president.

| Sec. | |
|---|---|
| 37-29-65. | Selection of trustees; terms; compensation; provisions applicable to East Mississippi Junior College and Coahoma Community College Districts. |
| 37-29-67. | General powers and duties of trustees. |
| 37-29-69. | Junior college attendance centers. |
| 37-29-71. | Preparation of budget. |
| 37-29-73. | Board may execute oil, gas and mineral leases; terms; limits. |
| 37-29-75. | Sales of surplus real and personal property. |
| 37-29-76. | Exchange of lands. |
| 37-29-77. | Lease of school buildings, equipment and lands. |
| 37-29-79. | Transportation of pupils; no additional allocation; promulgation of rules. |
| 37-29-81. | Fees and tuition. |
| 37-29-83. | Repealed. |
| 37-29-85. | Liability insurance to cover official actions of board members. |
| 37-29-87. | Conveyance of land to counties within junior college districts. |

## § 37-29-61. President; selection and term.

The executive head of a junior college shall be the president of the college who shall be selected by the board of trustees for a term not to exceed four years.

**HISTORY: Codes, 1942, § 6475-06; Laws, 1950, ch. 369, § 6.**

**Cross References —** Powers of the president, see § 37-29-63.
President of Mississippi Gulf Coast Junior College District, see § 37-29-405.
President of Copiah-Lincoln Junior College District, see § 37-29-453.
President of Meridian Junior College District, see § 37-29-509.

## § 37-29-63. Powers of the president.

(1) The president of any community college, or such other person designated or authorized by the board of trustees, shall have the power to recommend to the board of trustees all teachers to be employed in the district.

(2) The president may remove or suspend any member of the faculty subject to the approval of the trustees. He shall be the general manager of all fiscal and administrative affairs of the district with full authority to select, direct, employ and discharge any and all employees other than teachers; however, the board may make provisions and establish policies for leave for faculty members and other key personnel.

(3) The president shall have the authority, subject to the provisions of Section 75-76-34 and Sections 37-29-1 through 37-29-273 and the approval of the trustees, to arrange and survey courses of study, fix schedules, and establish and enforce rules and discipline for the governing of teachers and students. He shall be the general custodian of the property of the district.

**HISTORY: Codes, 1942, § 6475-55; Laws, 1964, ch. 398, § 5; Laws, 2002, ch. 532, § 1; Laws, 2004, ch. 321, § 1; Laws, 2005, ch. 528, § 1; Laws, 2013, ch. 327, § 5, eff from and after July 1, 2013.**

**Editor's Notes —** Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Laws of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

**Cross References —** Selection and term of president, see § 37-29-61.

Powers of president of the Mississippi Gulf Coast Junior College District, see § 37-29-407.

Powers of president of the Copiah-Lincoln Junior College District, see § 37-29-455.

Powers of president of the Meridian Junior College District, see § 37-29-509.

## JUDICIAL DECISIONS

**1. In general.**

This section does not give the board of trustees the sole discretion to hire and employ teachers, but also gives the president of a community college broad powers and, therefore, the president of a community college, as well as the board of trustees, is prohibited under § 25-4-105 from employing relatives. Hinds Community College Dist. v. Muse, 725 So. 2d 207, 1998 Miss. LEXIS 610 (Miss. 1998).

While § 37-29-63 vests in the president of a junior college the power to "remove or suspend any member of the faculty subject to the approval of the trustees," this in no way empowers a new president to abrogate existing employment contracts without cause. Hoffman v. Board of Trustees, East Mississippi Junior College, 567 So. 2d 838, 1990 Miss. LEXIS 551 (Miss. 1990).

## RESEARCH REFERENCES

**ALR.**

Negligent discharge of employee. 53 A.L.R.5th 219.

## § 37-29-65. Selection of trustees; terms; compensation; provisions applicable to East Mississippi Junior College and Coahoma Community College Districts.

(1) Except as provided in this section and in Sections 37-29-409, 37-29-457 and 37-29-505, there shall be five (5) trustees from each county of the junior college district which originally entered into and gave financial aid in establishing the junior college. On June 30, 1992, the offices of the six (6) trustees from each of the original counties in the Northwest Community College District shall stand vacated. The board of supervisors of those respective counties shall appoint two (2) members on July 1, 1992, to serve full terms of office as provided in this section. The board of supervisors of those respective counties shall appoint one (1) member who is a qualified elector from each supervisors district to serve as a member, either of which may be the county superintendent of education if he or she resides in a respective supervisors district. Counties which subsequent to the establishment of the junior college joined the district shall have only one (1) trustee. However, the board of trustees so constituted, by appropriate resolution, may enlarge its number to six (6) trustees from each county. The board of trustees shall also be authorized within its discretion to reduce its number to two (2) trustees at

large from each county. In any case in which there is an equal number of trustees the board of trustees may appoint another person to membership.

(2) The county superintendent, if appointed by the county board of supervisors, may, in his discretion, choose not to serve as a member of such board of trustees. Such decision not to serve shall be in writing and entered on the minutes of the board of trustees of the junior college district. The county board of supervisors of any county whose county superintendent of education appointed under the authority of this section, declines the appointment or resigns, pursuant to this subsection (2), shall fill the vacancy caused by such resignation by appointing a member who is a qualified elector of the county at large in accordance with subsection (6) of this section. No county superintendent whose school district is located within the East Mississippi Community College District shall serve on the board of trustees for that community college district.

(3) From and after March 24, 1990, the Board of Trustees of the East Mississippi Community College District shall consist of twelve (12) members. The appointing authorities shall appoint a new board of trustees as follows: Clay County shall be entitled to two (2) members, Kemper County shall be entitled to two (2) members, Lauderdale County shall be entitled to two (2) members, Lowndes County shall be entitled to two (2) members, Noxubee County shall be entitled to two (2) members and Oktibbeha County shall be entitled to two (2) members. No member of the Board of Trustees of the East Mississippi Community College District shall have served on such board prior to March 24, 1990.

(4) The Board of Trustees of the Coahoma Community College District shall consist of nine (9) members. The appointing authorities shall appoint the new board of trustees as follows: Coahoma County shall be entitled to five (5) members appointed in the manner provided herein, Tunica County shall be entitled to one (1) member, Quitman County shall be entitled to one (1) member, Bolivar County shall be entitled to one (1) member, and Tallahatchie County shall be entitled to one (1) member. Persons who are currently serving as members of the board of Trustees of the Mississippi Delta Community College District or Northwest Community College District shall be eligible for appointment to the board.

(5) The terms of office shall be five (5) years; however, upon the first selection of trustees in each county, one (1) shall be elected for a term of five (5) years, one (1) for a term of four (4) years, one (1) for a term of three (3) years, one (1) for a term of two (2) years, and one (1) for a term of one (1) year, so as to prevent the retirement of more than one (1) member of any one (1) county in any one (1) year. Where the board chooses or is required by statute to reduce its number, the board shall specify the expiration dates of such terms of office in order to prevent the retirement of more than one (1) member of any one (1) county in any one (1) year.

(6) The board of supervisors shall elect the requisite number of discreet persons of good moral character, sufficient education and experience, and of proven interest in public education, who are qualified electors of the county, as

trustees of the junior college; and annually thereafter the board of supervisors in like manner shall fill vacancies. All trustees so appointed shall be listed in the minutes of the board of supervisors and their appointment shall be certified by the chancery clerk to the president of the junior college.

(7) Each junior college trustee may be paid, out of junior college funds, a per diem as authorized in Section 25-3-69, Mississippi Code of 1972, per meeting of said board and, in addition thereto, the mileage authorized under Section 25-3-41, Mississippi Code of 1972, per mile in coming to and returning from said meeting, calculated upon the customary and normally traveled route from the home of such trustee to the campus of said junior college. Such allowance of per diem and mileage shall not, however, be allowed for more than fifteen (15) meetings for any one (1) fiscal year and shall only be paid for meetings actually attended by such trustees.

(8) The provisions of this section, other than those provisions pertaining to per diem compensation and travel allowances for junior college trustees, shall not apply to any existing publicly operated junior college, lying in and operated by a county bordering on the Mississippi River, and the junior college trustees of such junior college shall be appointed and confirmed as heretofore.

(9) No county superintendent of education, by virtue of his or her office, shall be automatically placed on the board of trustees for any community college district to which this section applies. The number of trustees from each county shall be reduced by one (1) member if such member is superintendent of education. However, if the county board of supervisors, in making an appointment to the community college district board of trustees, chooses to appoint the county superintendent of education at the expiration of the term of the at large member, the superintendent may serve, unless otherwise disqualified.

**HISTORY: Codes, 1942, § 6475-05; Laws, 1950, ch. 369, § 5; Laws, 1958, ch. 298; Laws, 1960, ch. 308, § 1; Laws, 1964, ch. 402, § 1; Laws, 1971, ch. 386, § 1; Laws, 1972, ch. 409, § 1; Laws, 1975, ch. 376; Laws, 1980, ch. 547; Laws, 1988, ch. 467; Laws, 1989, ch. 575, § 1; Laws, 1990, ch. 471, § 1; Laws, 1990, 1st Ex Sess, ch. 50, § 1; Laws, 1992, ch. 307, § 1; Laws, 1995, ch. 605, § 13, eff from and after July 1, 1995; Laws, 2019, ch. 479, § 1, eff from and after July 1, 2019.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Amendment Notes** — The 2019 amendment rewrote the section to delete the requirement that a county superintendent of education automatically serve as a member of the board of a community college district, and to provide that the board of supervisors of any county within a community college district may appoint the county superintendent or another qualified elector from the respective county at large to serve on the board of trustees.

**Cross References** — Creation and composition of East Mississippi Junior College District, see § 37-29-31.

General powers and duties of trustees, see § 37-29-67.

Selection and terms of trustees, Mississippi Gulf Coast Junior College District, see

§ 37-29-409.

Selection and terms of trustees, Copiah-Lincoln Junior College District, see § 37-29-457.

Coahoma Community College District, see §§ 37-29-551 through 37-29-571.

## JUDICIAL DECISIONS

**1. In general.**

"One man, one vote" rule has no relevancy to selection of trustees of Mississippi public junior colleges, as such selection is appointive rather than elective. Oaks v. Board of Trustees, 385 F. Supp. 392, 1974 U.S. Dist. LEXIS 5846 (N.D. Miss. 1974).

## OPINIONS OF THE ATTORNEY GENERAL

Senate Bill 2520 does not require Board of Trustees of Northwest Mississippi Community College to alter adopted plan, so that present trustees' terms would not be extended to June 30, 1992 but would expire as originally scheduled; with respect to adopted plan to reduce number of trustees, boards of supervisors would have no authority to appoint or reappoint as staggered terms expire. Troutt, May 4, 1990, A.G. Op. #90-0285.

While Section 37-29-65(4) does not contemplate making appointments a year in advance, there appears to be no limitation as to how far in advance of the expiration of a term an appointing authority may appoint one to serve the ensuing term. Griffith, August 23, 1995, A.G. Op. #95-0486.

There is no requirement that the board of supervisors of a county in which there is no county superintendent of education appoint a superintendent of a consolidated school district within the county to the board of trustees of a junior college district. McKenzie, June 4, 2004, A.G. Op. 04-0226.

Subsection (6) of this section controls appointments to a junior college board of trustees. A trustee of a community college district appointed by the county board of supervisors must be a qualified elector of the county. McKenzie, June 4, 2004, A.G. Op. 04-0226.

## RESEARCH REFERENCES

**Am. Jur.**

15A Am. Jur. 2d, Colleges and Universities § 9.

## § 37-29-67. General powers and duties of trustees.

(1) The duties of the board of trustees shall be the general government of the community/junior college and directive of the administration thereof. Subject to the provisions of Sections 37-29-1 through 37-29-273, the board shall have full power to do all things necessary to the successful operation of the district and the college or colleges or attendance centers located therein to insure educational advantages and opportunities to all the enrollees within the district.

(2) The board of trustees shall be authorized to designate a personnel supervisor or other person employed by the district to recommend teachers and to transmit such recommendations to the board of trustees; however, this authorization shall be restricted to no more than two (2) positions for each employment period in the district.

(3) The delineation and enumeration of the powers and purposes set out in Sections 37-29-1 through 37-29-273 shall be deemed to be supplemental and additional, and shall not be construed to restrict the powers of the board of trustees of the district or of any college located therein so as to deny to the said district and the college or colleges therein the rights, privileges and powers previously authorized by statute.

(4) The board of trustees shall have the power to enter into an energy performance contract, energy services contract, a shared-savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as prescribed in Section 31-7-14.

(5) The board of trustees shall be authorized, with the approval of the Mississippi Community College Board, to change the name of the junior college to community college. The Mississippi Community College Board shall establish guidelines for the implementation of any junior college name change. Any reference to junior college district in this chapter shall hereinafter refer to the junior college district or its successor in name as changed by the board of trustees.

(6) The boards of trustees shall purchase and maintain business property insurance and business personal property insurance on all college-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to such buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The boards of trustees are authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The boards of trustees are authorized to enter into agreements with the Department of Finance and Administration, local school districts, other community/junior college districts, state institutions of higher learning, community hospitals and/or other state agencies to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

**HISTORY: Codes, 1942, §§ 6475-06, 6475-53, 6475-61; Laws, 1950, ch. 369, § 6; Laws, 1964, ch. 398, §§ 3, 11; Laws, 1985, ch. 493, § 4; Laws, 1987, ch. 498; Laws, 2002, ch. 532, § 2; Laws, 2004, ch. 321, § 2; Laws, 2005, ch. 528, § 2; Laws, 2005, 5th Ex Sess, ch. 24, § 5; Laws, 2006, ch. 360, § 1; Laws, 2014, ch. 397, § 19; Laws, 2014, ch. 481, § 4, eff from and after July 1, 2014.**

**Joint Legislative Committee Note** — Section 19 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014), amended this section. Section 4 of ch. 481, Laws of 2014, effective from and after July 1, 2014 (approved April 10, 2014), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 481, Laws of 2014, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Editor's Notes —** Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Laws of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

**Cross References —** Cooperation in carrying out provisions regarding job development and training, see § 7-1-365.

Public contracts for energy efficiency services, see § 31-7-14.

State Board for Community and Junior Colleges, see § 37-4-1 et seq.

Board directed to study feasibility of developing and implementing a state adopted uniform contract within each community and junior college district, see § 37-4-7.

Power of board of trustees of junior colleges to require physical examinations of school employees, see § 37-11-17.

Selection, terms and compensation of trustees, see § 37-29-65.

Preparation of budget, see § 37-29-71.

Authority of board of trustees to borrow money in anticipation of taxes, see § 37-29-101.

Issuance of bonds by boards of trustees of junior college districts for dormitories and other housing facilities, see § 37-29-107 et seq.

General powers and duties of trustees of the Mississippi Gulf Coast Junior College District, see § 37-29-411.

General powers and duties of trustees of the Copiah-Lincoln Junior College District, see § 37-29-459.

General powers and duties of trustees of the Meridian Junior College District, see § 37-29-507.

## JUDICIAL DECISIONS

### ANALYSIS

1.-10. [Reserved for future use.]
11. Under former Section 6475.

**1.-10. [Reserved for future use.]**

**11. Under former Section 6475.**

**Section 6475.** Mandamus petition to require board of trustees of state junior college to allow and pay account for athletic goods, which alleged that debt was contracted by board of trustees through their duly authorized agent, held demurrable, where no statute was cited nor authority given whereby board was empowered to designate agent to perform its duties. Alex Loeb, Inc., v. Board of Trustees, 171 Miss. 467, 158 So. 333, 1935 Miss. LEXIS 2 (Miss. 1935).

Mandamus requiring board of trustees of state junior college to allow and pay claim for athletic goods would not lie where it was not alleged that board of trustees failed to perform an official duty. Alex Loeb, Inc., v. Board of Trustees, 171 Miss. 467, 158 So. 333, 1935 Miss. LEXIS 2 (Miss. 1935).

## OPINIONS OF THE ATTORNEY GENERAL

Mississippi has no tenure statutes; there is no authority to establish board policy granting tenure to faculty members of public community or junior college. Haraway, March 8, 1990, A.G. Op. #90-0120.

Since Mississippi Supreme Court opinion rendered sovereign immunity of junior and community college districts null and void, community and junior colleges across state now have necessary implied power and authority to purchase contracts for liability insurance. Piazza, Sept. 4, 1992, A.G. Op. #92-0715.

A community college may convey an easement over land under its jurisdiction to an individual in return for other land of equal or greater value upon such basis as the board of trustees finds acceptable. Bradley, May 3, 2002, A.G. Op. #02-0202.

The board of trustees of the Copiah-Lincoln Community College District has authority to adopt a policy governing the handling of records which are confidential under state or federal law. Henley, July 18, 2005, A.G. Op. 05-0351.

If streets are determined not to be dedicated city streets and are the property of a community college, then the provisions of Section 37-29-67 authorize the board of trustees to gate the streets for the protection and safety of students, guests, faculty and employees. Smith, Nov. 9, 2005, A.G. Op. 05-0566.

## § 37-29-69. Junior college attendance centers.

Any junior college district is hereby authorized and empowered to operate junior college attendance centers at existing sites of junior college plants and facilities and at such other places within the district, subject to the approval of the Mississippi Community College Board, as the board of trustees shall determine to be in the best interest of the district.

Two (2) or more boards of trustees may cooperate in establishing, operating and maintaining attendance centers.

**HISTORY: Codes, 1942, §§ 6475-53, 6475-54; Laws, 1964, ch. 398, §§ 3, 4; Laws, 1986, ch. 434, § 6; Laws, 2014, ch. 397, § 20, eff from and after July 1, 2014.**

**Cross References** — Mississippi Community College Board generally, see § 37-4-1 et seq.

Board to study feasibility of developing and implementing a state adopted uniform contract within each community and junior college district, see § 37-4-7.

Junior college attendance centers in Mississippi Gulf Coast Junior College District, see § 37-29-413.

Campuses of Copiah-Lincoln Junior College District, see § 37-29-461.

## § 37-29-71. Preparation of budget.

The board of trustees shall annually prepare a budget which shall contain a detailed estimate of the revenues and expenses anticipated for the ensuing year for general operation and maintenance and which shall set forth the reasonable requirements for anticipated needs for capital outlays for land, buildings, initial equipment for new buildings and major repairs, a reasonable accumulation for such purposes being hereby expressly authorized.

**HISTORY: Codes, 1942, § 6475-53; Laws, 1964, ch. 398, § 3, eff from and after July 1, 1964.**

**Cross References** — General powers and duties of trustees, see § 37-29-67.

Preparation of budget, Mississippi Gulf Coast Junior College District, see § 37-29-415.

Preparation of budget, Copiah-Lincoln Junior College District, see § 37-29-463.

Preparation of budget, Meridian Junior College District, see § 37-29-511.

Preparation of budget, Coahoma Community College District, see § 37-29-561.

## § 37-29-73. Board may execute oil, gas and mineral leases; terms; limits.

The board of trustees is authorized to execute oil, gas and mineral leases on any of the property owned by the board of trustees of the district, but such leases shall not extend for a term beyond five years unless oil, gas or other minerals shall be in production under said leases at the expiration of said period. The terms and conditions of said lease, within the limitations above set out, shall be for the determination and within the discretion of the board of trustees.

**HISTORY: Codes, 1942, § 6475-59; Laws, § 1964, ch. 398, § 9, eff from and after July 1, 1964.**

**Cross References —** Oil, gas, and mineral leases of lands of schools districts, see § 37-7-305.

Oil, gas, and mineral leases of lands of agricultural high schools, see § 37-27-29.

Oil, gas and mineral leases, execution by trustees of Mississippi Gulf Coast Junior College District, see § 37-29-417.

## § 37-29-75. Sales of surplus real and personal property.

When any land or other property owned by a junior college/community college district shall cease to be used or needed by the district, the same may be sold by the board of trustees upon sealed bids or at public auction after three (3) weeks' advertisement in a newspaper in the county where the said property is located. Personal property having a value determined by the board of less than Five Hundred Dollars ($500.00) may be sold without such advertisement; however, in such event, notice shall be posted in at least three public places in the county where such property is situated or where it is to be sold, giving notice of the time and place of such sale, and such property shall be sold to the highest and best bidder for cash. Such notice shall be posted for ten (10) days before the sale.

**HISTORY: Codes, 1942, § 6475-60; Laws, § 1964, ch. 398, § 10; Laws, 1993, ch. 556, § 4, eff from and after July 1, 1993.**

**Editor's Notes —** Laws of 1987, ch. 498, § 1, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Sale of property owned by school district which is no longer needed for school purposes, see § 37-7-451.

Sale of property owned by agricultural high school which is no longer needed for school purposes, see § 37-27-43.

Sales of surplus real and personal property by trustees of Mississippi Gulf Coast Junior College District, see § 37-29-419.

### OPINIONS OF THE ATTORNEY GENERAL

This section permits boards of trustees of community college districts to sell surplus property upon such basis as it finds to be in the best interest of the district consistent with its power and corresponding duty stated in Section 37-29-67. Henley, Dec. 19, 1997, A.G. Op. #97-0717.

A community college may convey an easement over land under its jurisdiction to an individual in return for other land of equal or greater value upon such basis as the board of trustees finds acceptable. Bradley, May 3, 2002, A.G. Op. #02-0202.

## § 37-29-76. Exchange of lands.

When any junior college district in which the junior college campus is located in a county having a population in excess of two hundred thousand (200,000) according to the 1970 federal decennial census, owns lands adjacent to lands owned by any county forming a part of such district, the board of trustees of any such district and the board of supervisors of any such county may make such exchanges of land and may execute such instruments perfecting the title of the county and that of the district as they, by appropriate resolutions, may find proper, all without the necessity of advertisement for or receiving bids.

**HISTORY: Codes, 1942, § 6475-60; Laws, 1972, ch. 413, § 1, eff from and after passage (approved April 27, 1972).**

**Editor's Notes** — Laws of 1987, ch. 498, § 1, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## § 37-29-77. Lease of school buildings, equipment and lands.

The board of trustees of any junior college is hereby authorized to lease the buildings and equipment thereof to any responsible individual for the purpose of carrying on a private school when there are no funds available for running said institution, and to lease the lands of said institution to some responsible person for agricultural purposes. Said leases shall not extend for any greater length of time than a period of three years from date of granting said lease.

**HISTORY: Codes, 1942, § 6484; Laws, 1932, ch. 106.**

**Cross References** — Similar provisions authorizing leases of property of agricultural high schools, see § 37-27-31.

## § 37-29-79. Transportation of pupils; no additional allocation; promulgation of rules.

Any junior college district is charged with the responsibility for providing preprofessional courses, liberal arts, technical, vocational, and adult education courses and shall undertake to provide the same as conveniently as is possible to the residents of the district, and to this end, the board of trustees is authorized and empowered to transport such enrollees as, in its discretion, should be transported in the best interest of the district. However, no additional allocation of any appropriation shall be made for such transportation. The board of trustees shall promulgate uniform rules to prevent discrimination in all matters of transportation.

**HISTORY: Codes, 1942, §§ 6475-15, 6475-56; Laws, 1950, ch. 369, § 15; Laws, 1964, ch. 398, § 6, eff from and after July 1, 1964.**

**Cross References —** Transportation of high school pupils attending agricultural high schools or junior colleges, see § 37-27-53.

Transportation of pupils in Mississippi Gulf Coast Junior College District, see § 37-29-421.

Transportation of pupils in Copiah-Lincoln Junior College District, see § 37-29-467.

Transportation of school children generally, see § 37-41-1 et seq.

## § 37-29-81. Fees and tuition.

The district, in the discretion of the board of trustees, may charge fees and tuitions in accordance with Section 37-103-25.

**HISTORY: Codes, 1942, § 6475-58; Laws, 1964, ch. 398, § 8; Laws, 2003, ch. 364, § 2, eff from and after July 1, 2003.**

**Cross References —** Fees and tuition of Mississippi Gulf Coast Junior College District, see § 37-29-423.

### RESEARCH REFERENCES

**Am. Jur.**

15A Am. Jur. 2d, Colleges and Universities §§ 18 et seq.

## § 37-29-83. Repealed.

Repealed by Laws 1990, ch. 518, § 17, eff from and after October 1, 1993.

[Laws, 1973, ch. 477, § 1; Repealed, Laws, 1984, ch. 495, § 36, and Laws, 1984, 1st Ex Sess, ch. 8, § 3; Reenacted and amended, Laws, 1985, ch. 474, § 42; Laws, 1986, ch. 438, § 15; Laws, 1987, ch. 483, § 20; Laws, 1988, ch. 442, § 17; Laws, 1989, ch. 537, § 16; Laws, 1990, ch. 518, § 17; Laws, 1991, ch. 618, § 16; Laws, 1992, ch. 491 § 17]

**Editor's Notes —** Former § 37-29-83 was entitled: Liability insurance on vehicles; lawsuits.

## § 37-29-85. Liability insurance to cover official actions of board members.

The board of trustees of any public junior college district is hereby authorized to purchase liability insurance to cover the official actions of its board members and the official actions of employees of such public junior college district. Such coverage shall be in an amount judged by the board to be adequate. The costs of such insurance shall be paid out of the public junior college district's general maintenance fund.

**HISTORY: Laws, 1981, ch. 510, § 1; Laws, 1982, ch. 459; Laws, 1985, ch. 474, § 48; Laws, 1986, ch. 438, § 16; Laws, 1987, ch. 483, § 21; Laws, 1988, ch. 442, § 18; Laws, 1989, ch. 537, § 17; Laws, 1990, ch. 518, § 18; Laws, 1991, ch. 618, § 17; Laws, 1992, ch. 491, § 18, eff from and after passage (approved May 12, 1992).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

### RESEARCH REFERENCES

**Law Reviews.**

1981 Mississippi Supreme Court Review: Insurance. 52 Miss. L. J. 445, June 1982.

1982 Mississippi Supreme Court Review: Torts. 53 Miss. L. J. 167, March 1983.

## § 37-29-87. Conveyance of land to counties within junior college districts.

The board of trustees of any public junior college district is hereby authorized, in its sole discretion, to convey real property and improvements thereon to any county within the junior college district without the necessity of advertising for and receiving bids and without receiving compensation therefor, provided the following requirements are met:

(a) Where the county received title to the property and conveyed said property to the board of trustees of the junior college district, or where the board of trustees of such district received title to the property from any source and the purchase price therefor was paid by the county, for the purpose of operating an attendance center; and

(b) Where the board of trustees of the junior college district has not received approvals from necessary state agencies or authorities to use said land for the operation of an attendance center; and

(c) Where said board of trustees has adopted a resolution that such land and improvements are not needed for junior college purposes and expressing the desire to convey such land and improvements back to the county.

**HISTORY: Laws, 1988, ch. 303, § 1, eff from and after passage (approved February 24, 1988).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## BORROWING OF MONEY; ISSUANCE OF BONDS

Sec.
37-29-101. Borrowing in anticipation of taxes; authorization to borrow funds from federal government to compensate for loss of revenue as result of Hurricane Katrina.
37-29-103. Long-term borrowing; procedure.
37-29-105. Utilization of available funds for commencement of projects for which bonds have been authorized.
37-29-107. Issuance of bonds for dormitories and other housing facilities.
37-29-109. Resolution authorizing issuance of bonds; bond provisions; sale.
37-29-111. When bonds may be refunded.
37-29-113. Refunding bonds.
37-29-115. Securing payment of bonds.
37-29-117. Actions or proceedings by bondholders.
37-29-119. Full faith and credit of state not pledged to payment of bonds.
37-29-121. Junior college district may borrow not to exceed $50,000 for housing facilities.
37-29-123. Declaration of intention to borrow; issuance of notes; repayment.
37-29-125. Board of trustees to fix and collect fees, rents and charges; disposition of monies.
37-29-127. Foregoing sections as cumulative.

### § 37-29-101. Borrowing in anticipation of taxes; authorization to borrow funds from federal government to compensate for loss of revenue as result of Hurricane Katrina.

(1) In addition to other authority granted by Sections 37-29-1 through 37-29-273 or existing laws, the board of trustees may borrow money in anticipation of taxes, not to exceed fifty percent (50%) of the previous year's ad valorem tax receipts, for the purpose of paying any expenses authorized by law for the operation, maintenance and support of the college. The loan shall be evidenced by note or notes bearing the signatures of the chairman of the board and of the secretary of the board of trustees, and the seal of the college shall be thereon impressed. The notes shall mature not later than the thirtieth day of June next thereafter, and the notes shall not bear interest in excess of that allowed in Section 75-17-105, Mississippi Code of 1972.

(2) The board of trustees may borrow funds from the United States federal government or any agency thereof to compensate for the loss of revenue collected or estimated to be collected on behalf of the community or junior college district from local sources during a fiscal year as a result of Hurricane Katrina, may issue its promissory note to the United States federal government or any agency thereof, and may comply with and issue the regulations of the United States federal government or agency thereof regarding the promissory note. However, this section does not authorize any levy of taxes or pledge of collateral for the security of a promissory note not otherwise allowed by law. The State of Mississippi may sign any promissory note as an equal co-obligor on any such note, and in the event the State of Mississippi signs the

promissory note as a co-obligor, the full faith and credit of the State of Mississippi shall be pledged for the payment of the promissory note.

**HISTORY: Codes, 1942, § 6475-57; Laws, 1964, ch. 398, § 7; Laws, 1968, ch. 406, § 1; Laws, 1981, ch. 462, § 6; Laws, 1982, ch. 434, § 11; Laws, 1983, ch. 541, § 16; Laws, 2006, ch. 308, § 3, eff from and after passage (approved Feb. 20, 2006).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a paragraph designation error in the first paragraph adding "(1)" preceding "In addition to other authority granted by Sections 37-29-1 through 37-29-273 or existing laws." The Joint Committee ratified the correction at its May 31, 2006, meeting.

**Editor's Notes —** Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Laws of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

**Cross References —** Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Borrowing in anticipation of taxes by trustees of Mississippi Gulf Coast Junior College District, see § 37-29-425.

Borrowing in anticipation of taxes by trustees of Copiah-Lincoln Junior College District, see § 37-29-469.

Rate of interest which notes treated in this section must bear, see § 75-17-105.

## § 37-29-103. Long-term borrowing; procedure.

Any board of trustees may, in its discretion, by the concurrence of two-thirds (⅔) of its authorized members present and voting and for good cause shown therefor, to be spread upon its minutes by way of its resolution or order, which shall contain a proposal as to the revenues from which it is anticipated the loans herein authorized are to be repaid, authorize the junior college district to borrow money from time to time for periods not to exceed twenty-five (25) years under such terms and conditions as the board deems necessary and requisite and upon its issuing its promissory note or notes or other negotiable instruments. Such loans may be repaid from the general fund of the district, whether the same shall have been derived from ad valorem tax receipts or otherwise and may be further secured by a pledge of the avails of the levies, whether for support, enlargement, improvement or repairs, authorized by Section 37-29-141, Mississippi Code of 1972; and the tax receipts used to repay such loans from any levies so pledged shall be excluded from the ten percent (10%) growth limitation on ad valorem taxes imposed in Sections 27-39-320, 27-39-321 and 37-57-107, Mississippi Code of 1972. Such note or notes or other negotiable instruments shall be executed by the manual or facsimile signature of the chairman of the board of trustees and countersigned by the manual or facsimile signature of the secretary thereof, with the seal of the district affixed thereto. At least one (1) signature on each such note shall be a manual signature, as specified in the issuing resolution. The coupons, if any, may bear only facsimile signatures. Any notes or other evidences of indebtedness issued pursuant to this section shall be sold pursuant to the provisions of Section 31-19-25, Mississippi Code of 1972, and shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, Mississippi Code of 1972.

**HISTORY: Codes, 1942, § 6475-62; Laws, 1964, ch. 398, § 12; Laws, 1966, ch. 416, § 1; Laws, 1968, ch. 406, § 2; Laws, 1970, ch. 378, § 1; Laws, 1975, ch. 428; Laws, 1976, ch. 411; Laws, 1981, ch. 460, § 1; Laws, 1982, ch. 434, § 12; Laws, 1983, ch. 541, § 17; Laws, 1988, ch. 316, eff from and after passage (approved April 11, 1988); Laws, 2018, ch. 365, § 1, eff from and after July 1, 2018.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Amendment Notes** — The 2018 amendment substituted "twenty-five (25) years" for "fifteen (15) years" in the first sentence.

**Cross References** — Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Limitation on maximum interest rate to maturity on obligations issued pursuant to this section, see § 75-17-101.

## § 37-29-105. Utilization of available funds for commencement of projects for which bonds have been authorized.

In the event that bonds shall have been authorized for projects determined by the board of trustees and such bonds validated, the board of trustees is authorized to utilize any available funds for the immediate commencement of such project and to reimburse the funds from which any such expenditures are made from the proceeds of the bonds when the same are received.

**HISTORY: Codes, 1942, § 6475-57; Laws, 1964, ch. 398, § 7; Laws, 1968, ch. 406, § 1, eff from and after passage (approved June 24, 1968).**

**Cross References** — Utilization, by trustees of Mississippi Gulf Coast Junior College District, of available funds for commencement of projects for which bonds have been authorized, see § 37-29-427.

## § 37-29-107. Issuance of bonds for dormitories and other housing facilities.

Subject to the approval of the Mississippi Community College Board, the boards of trustees of junior college districts are hereby authorized and empowered to contract with and borrow money from the United States of America, or any department, instrumentality, agency or agencies thereof, as may be designated or created to make loans or grants, or from private lenders, for the purpose of acquiring land for, and erecting, repairing, remodeling, maintaining, adding to, extending, improving, equipping or acquiring dormitories with or without dining facilities, dwellings or apartments to be located at or near the campuses of such junior colleges, for the use of students, faculty members or officers or employees thereof. The said boards are hereby authorized to supervise the contracting for and the construction and equipping of all facilities constructed and financed hereunder.

**HISTORY: Codes, 1942, § 6477-01; Laws, 1962, ch. 353, § 1; Laws, 1986, ch. 434, § 7; Laws, 2014, ch. 397, § 21, eff from and after July 1, 2014.**

**Cross References —** Mississippi Community College Board generally, see § 37-4-1 et seq.

Issuance of bonds as evidence of indebtedness authorized by this section, see § 37-29-109.

Issuance of bonds by trustees of Mississippi Gulf Coast Junior College District, see § 37-29-429.

## § 37-29-109. Resolution authorizing issuance of bonds; bond provisions; sale.

The loans authorized by Section 37-29-107 and Sections 37-29-401 through 37-29-437, shall be evidenced by bonds, which shall be authorized by resolution of the boards of trustees. Each such resolution shall describe the land to be acquired, if any, and the said dormitories, dwellings or apartments to be erected, repaired, remodeled, maintained, added to, extended, improved, equipped, or acquired, together with the equipment therefor. A majority vote of all of the members of such boards, respectively, shall be necessary to the adoption of any such resolution. All votes cast on such resolutions shall be by yea and nay vote, duly recorded on the minutes of the proceedings of such boards, respectively.

Such bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding twenty-five (25) years from the respective dates thereof, may mature in such amount or amounts, may bear interest at such rate or rates, not exceeding that allowed in Section 75-17-101, Mississippi Code of 1972, payable semiannually, may be in such forms, either coupon or registered, may carry such registration privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, and may be subject to such terms of redemption, with or without premium, all as such resolution or other resolutions may provide.

All such bonds shall be sold at public sale pursuant to such notice as such boards shall prescribe by resolution. All such bonds shall be fully negotiable within the meaning and for the purposes of the Uniform Commercial Code. Incidental costs in connection with the issuance of said bonds, the printing thereof, costs of validation proceedings if required by bond resolution, including attorney's fees and other costs directly attributable to the issuance of said bonds, either in one or more series or at one (1) time or various times, may be paid out of the proceeds of the sale of said bonds. In agreements or commitments by or between the boards of trustees and private lenders and/or the U. S. Department of Housing and Urban Development or its successor to make loans or grants in which bonds are to be issued under the provisions of this section, and in which part or all of the principal and/or interest on said bonds is to be paid or guaranteed by the U. S. Department of Housing and Urban Development or its successor, said bonds shall mature at such time or times, not to exceed (40) years, as shall be prescribed in the resolution of the board of trustees authorizing their issuance and shall bear a net interest rate not in excess of that allowed in Section 75-17-101, Mississippi Code of 1972.

Notwithstanding any other provision of law, in any resolution authorizing the issuance of bonds hereunder, including refunding bonds, the boards of trustees, may provide for the initial issuance of one or more bonds (hereinafter sometimes collectively called "bond"), may make such provision for installment payments of the principal amount of any such bond as they may consider desirable, and may provide for the making of any such bond registerable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. Such boards may further make provision in any such resolution for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registerable as to principal or as to principal and interest.

**HISTORY: Codes, 1942, §§ 6477-02, 6477-03; Laws, 1962, ch. 353, §§ 2, 3; Laws, 1969, Ex Sess, ch. 28, § 1; Laws, 1981, ch. 462, § 7; Laws, 1981, 1st Ex Sess, ch. 10; Laws, 1982, ch. 434, § 13; Laws, 1983, ch. 541, § 18, eff from and after passage (approved April 25, 1983).**

**Cross References —** Validation of bond issues, see §§ 31-13-1 through 31-13-11.

Refunding of bonds issued under this section, see § 37-29-113.

Securing payment of bonds issued under this section, see § 37-29-115.

Commercial paper under Uniform Commercial Code, see § 75-3-101 et seq.

Limit on maximum interest rate to maturity on obligations issued under provisions of this section, see § 75-17-101.

## § 37-29-111. When bonds may be refunded.

Bonds issued under the provisions of Section 37-29-109, may be refunded, in whole or in part, in any of the following circumstances, to wit:

(a) When any such bonds by their terms become due and payable and there are not sufficient sums in the fund established for their payment to pay such bonds and the interest thereon;

(b) When any such bonds are by their terms callable for payment and redemption in advance of their date of maturity and shall have been duly called for payment and redemption;

(c) When any such bonds are voluntarily surrendered by the holder or holders thereof in exchange for refunding bonds; and

(d) When, in connection with the issuance of any additional bonds under the provisions of Section 37-29-109 for the purpose of financing any additional construction authorized under the provisions of Section 37-29-

107, any such board shall determine to combine such new issue of bonds with any issue or issues of bonds of the same board then outstanding, for the purpose of unifying such indebtedness and utilizing the income and revenues derived from all projects or facilities operated by such board to the payment of such indebtedness, and such board shall determine that such outstanding bonds are by their terms then callable for redemption or are obtainable by and through the voluntary surrender thereof by the holder or holders thereof.

**HISTORY: Codes, 1942, § 6477-04; Laws, 1962, ch. 353, § 4, eff from and after passage (approved May 21, 1962).**

## § 37-29-113. Refunding bonds.

For the purpose of refunding any bonds issued under the provisions of Section 37-29-109, including refunding bonds, any board of trustees may make and issue refunding bonds in such amount as may be necessary to pay off and redeem the bonds to be refunded together with unpaid and past due interest thereon and any premium which may be due under the terms of such outstanding bonds, together also with the cost of issuing such refunding bonds. Said board may sell the same in like manner as provided for the initial issuance of bonds. With the proceeds of any such refunding bonds such board shall pay off, redeem and cancel such old bonds and interest coupons as may have matured, or such bonds as may have been called for payment and redemption together with the past due interest and premium, if any, due thereon; such bonds may be issued and delivered in exchange for a like par value amount of bonds to refund which the refunding bonds were issued. No refunding bonds issued hereunder shall be payable in more than twenty-five (25) years from the date thereof, nor shall any such refunding bonds bear interest at a rate in excess of that allowed in Section 75-17-101, Mississippi Code of 1972, payable semiannually. All such refunding bonds shall be payable from the same source or sources as were pledged to the payment of the bonds refunded thereby and, in the discretion of such board of trustees, may be payable from any other source or sources which may be pledged to the payment of revenue bonds issued hereunder. Bonds of two (2) or more outstanding issues of the same board may be refunded in a single issue of refunding bonds.

**HISTORY: Codes, 1942, § 6477-05; Laws, 1962, ch. 353, § 5; Laws, 1981, ch. 462, § 8; Laws, 1982, ch. 434, § 14; Laws, 1983, ch. 541, § 19, eff from and after passage (approved April 25, 1983).**

**Cross References —** Limit on maximum interest rate to maturity on obligations issued under provisions of this section, see § 75-17-101.

## § 37-29-115. Securing payment of bonds.

The boards of trustees, in the issuance of bonds under the provisions of Section 37-29-109, in order to secure the payment of such bonds and the interest thereon, shall have power by resolution:

(a) To fix and maintain (1) fees, rentals and other charges to be paid by students, faculty members, or officers or employees using or being served by any dormitories, dwellings or apartments erected, repaired, remodeled, maintained, added to, extended, improved or acquired under the authority of Section 37-29-107; (2) fees, rentals and other charges to be paid by students, faculty members, or officers or employees using or being served by any other dormitories, dwellings or apartments or other projects or facilities at any junior college for which bonds are issued under the provisions of Section 37-29-109, which fees, rentals and other charges shall be the same as those applicable to the dormitories, dwellings or apartments referred to under (1) above; in fixing such fees, rentals and other charges, there may be allowed reasonable differentials based on the condition, type, location and relative convenience of the dormitories, dwellings or apartments or other projects or facilities in question, but such differentials shall be uniform as to all students, faculty members, officers or employees similarly accommodated;

(b) To provide that bonds issued under the provisions of Section 37-29-109 shall be secured by a first lien on, and shall be payable from, all or any part of the income and revenues derived from fees, rentals and other charges to be paid by students, faculty members, officers or employees using or being served by any dormitories, dwellings or apartments, or other projects or facilities operated at such junior colleges, respectively, and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under the authority of Section 37-29-107 or any other law, or otherwise, and not then currently pledged;

(c) To pledge and assign to or in trust for the benefit of the holder or holders of any bond or bonds, coupon or coupons issued under the provisions of Section 37-29-109, an amount of the income and revenues derived from such fees, rentals and other charges to be paid by students, faculty members, officers or employees, using or being served by any dormitories, dwellings or apartments, or other projects or facilities operated at such junior colleges, and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under the authority of Section 37-29-107 or any other law, or otherwise, and not then currently pledged, which rentals, fees and charges imposed and pledged shall be sufficient to pay when due the bonds issued under the provisions of Section 37-29-109 and interest thereon, to create and maintain a reasonable reserve therefor, and to operate and maintain the project constructed under the terms of Section 37-29-107, including insurance thereon, and to create and at all times maintain an adequate reserve for contingencies and for major repairs and replacements;

(d) To covenant with or for the benefit of the holder or holders of any bond or bonds, coupon or coupons issued under the provisions of Section 37-29-109 to erect, repair, remodel, maintain, add to, extend, improve or acquire any dormitories, dwellings or apartments, and, so long as any such bonds or coupons shall remain outstanding and unpaid, to fix, maintain and collect fees, rentals or other charges from students, faculty members, officers or employees using or being served by any such facilities erected, repaired, remodeled, maintained, added to, extended, improved, or acquired under the authority of Section 37-29-107 or any other law, or otherwise, which fees, rentals or other charges shall be sufficient to pay when due any bond or bonds, coupon or coupons, issued under the provisions of Section 37-29-109, and create and maintain a reasonable reserve therefor, and to pay the cost of operation and maintenance of such facilities, including insurance thereon, and to create and at all times maintain an adequate reserve for contingencies and for major repairs and replacements;

(e) To make and enforce and to agree to make and enforce parietal rules that shall insure the use of any such dormitory, dwelling or apartment, by students, faculty members, officers or employees of such junior college to the maximum extent to which such facilities are capable of serving same, so long as such rules are not in conflict with existing covenants;

(f) To covenant that as long as any bonds or coupons issued under the provisions of section 37-29-109 shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined by the resolution issuing such bonds, (1) voluntarily create, or cause to be created, any debt, lien, pledge, assignment, encumbrance, or other charge having priority to or being on a parity with the lien of the bonds so issued upon any of the income and revenues derived from fees, rentals and other charges to be paid by students, faculty members, officers or employees using or being served by any dormitories, dwellings or apartments operated at any such junior college and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under the authority of section 37-29-107 or any other law, or otherwise, or (2) convey or otherwise alienate any such dormitories, dwellings or apartments, or the real estate upon which the same shall be located, except at a price sufficient to pay all the bonds then outstanding and interest thereon payable from the revenues of such facilities, and then only in accordance with any agreements with the holder or holders of such bonds, or (3) mortgage or otherwise voluntarily create, or cause to be created, any encumbrance on any such dormitory, dwelling or apartment, or the real estate upon which it shall be located;

(g) To covenant as to the proceedings by which the terms of any contract with a holder or holders of such bonds may be amended or rescinded, the amount or percentage of bonds the holder or holders of which must consent thereto, and the manner in which such consent may be given;

(h) To vest in the holder or holders of any specified amount of percentage of bonds the right to apply to any court of competent jurisdiction for and to have granted the appointment of a receiver or receivers of the income and revenues pledged to or for the benefit of the holder or holders of any such bonds, which receiver or receivers may have and be granted such powers and duties as are usually granted under the laws of the State of Mississippi to a receiver or receivers appointed in connection with the foreclosure of a mortgage made by a private corporation.

**HISTORY: Codes, 1942, § 6477-06; Laws, 1962, ch. 353, § 6, eff from and after passage (approved May 21, 1962).**

## § 37-29-117. Actions or proceedings by bondholders.

The holder of any bond or any interest coupon issued under the provisions of Sections 37-29-107 through 37-29-115 may, by suit, action, mandamus or other proceedings at law or in equity, enforce and compel performance by the appropriate official or officials of the said boards of trustees of any or all acts and duties to be performed by such boards or such officials under the provisions of said sections and under the resolution authorizing the issuance of such bond or interest coupon. If there be any default in the payment of the interest on and principal of any of such bonds, any court having jurisdiction in the proper action may, upon petition of the holder of any such bonds, appoint a receiver to administer and operate the facilities, the revenues of which were pledged to the payment of such bonds, with power to fix and collect fees, rentals and other charges sufficient to provide for the payment of all bonds outstanding, to the payment of which the revenues of such facilities were pledged and to pay the expenses of operating and maintaining such facilities and to apply the revenues thereof in conformity with the provisions of said sections and of the resolution authorizing the issuance of such bonds.

**HISTORY: Codes, 1942, § 6477-07; Laws, 1962, ch. 353, § 7, eff from and after passage (approved May 21, 1962).**

## § 37-29-119. Full faith and credit of state not pledged to payment of bonds.

It shall be understood that the full faith and credit of the State of Mississippi is not pledged to the payment of such bonds as are issued under the provisions of Sections 37-29-107 through 37-29-115, and that such bonds are payable solely from the sources provided by law.

**HISTORY: Codes, 1942, § 6477-01; Laws, 1962, ch. 353, § 1, eff from and after its passage (approved May 21, 1962).**

## § 37-29-121. Junior college district may borrow not to exceed $50,000 for housing facilities.

Any junior college district, supported in whole or in part by tax levies of one or more counties, may borrow not exceeding Fifty Thousand Dollars ($50,000.00), for the purpose of receiving, transporting, erecting on the ground of said institution, and equipping and furnishing any prefabricated houses, or other materials, or appliances, fixtures, machines, furnishings or equipment, obtained by grant or otherwise from the United States of America or any department or agency thereof, or from any other source, where the same may be acquired for the use of the institution, any student personnel, or faculty members.

**HISTORY: Codes, 1942, § 6466-01; Laws, 1946, ch. 366, § 1.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any

reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Similar provisions authorizing borrowing by agricultural high schools, see § 37-27-69.

Borrowing by board of trustees of state institutions of higher learning, see § 37-101-91 et seq.

## § 37-29-123. Declaration of intention to borrow; issuance of notes; repayment.

In any such case the board of trustees of such junior college district by resolution or order, shall declare its intention to borrow any sum not in excess of the limitation fixed in Section 37-29-121, and shall recite in said resolution or order with reasonable particulars the purpose for which said funds are to be borrowed, and shall fix a schedule of amounts and dates of maturities by which such loans shall be repaid. Such resolution or order shall be duly recorded in the permanent minutes of the board of trustees of such institution. All such loans shall be fully repaid within six years, and they shall be evidenced by notes signed by the president and secretary of the board of trustees, which shall bear appropriate reference to the resolution or order of the board of trustees authorizing such loan. Such loan shall be retired in installments of not less than one-fifth the amount thereof on the first day of April of the year next succeeding the date of such loan and an equal amount on the same date of each and every year thereafter until said loan is paid.

Notes issued in evidence of such loans shall bear interest at a rate of not to exceed four percent (4%) per annum, all interest payable semi-annually, and no such note shall be sold or negotiated by said institution for less than par and accrued interest. Funds received by such institution from the sale or negotiation of any such notes shall be paid into the treasury of the institution and disbursed as other funds thereof are disbursed, but for no other purpose than that authorized by Section 37-29-121.

Such notes shall be lithographed, or engraved, and printed in two or more colors to prevent counterfeiting. Such notes shall bear the signature of the junior college issuing the same, by the president and secretary of the board of trustees thereof. They shall be impressed with the seal of such institution. Interest coupons attached may bear the facsimile signatures of the aforesaid officers of the board of trustees. Before negotiation or sale and delivery thereof, said notes shall be registered in a book kept in the business office of such institution.

All indebtedness so created shall be paid from first funds derived from tax levies for maintenance and operation of said school coming into the treasury thereof and from fees, rentals and other charges as provided in Section 37-29-125. In order to secure the prompt payment of any and all indebtedness, whether of principal or interest incurred hereunder, a special fund shall be established in the depository of the funds of said institution, the style of which shall be, "debt retirement fund of ________ junior college district," and immediately upon receipt of the distribution of said first funds derived from such tax levies, annually hereafter in advance of the due date of each and every installment of said indebtedness, a sufficient sum from said taxes shall be paid into said special fund for the retirement of all principal and interest coming due within said year equal to the difference, if any, between such principal and interest and the amount collected from fees, rentals and other charges, as provided in Section 37-29-125. Said debt retirement fund shall be used for no other purpose than for the payment of principal and interest of indebtedness incurred hereunder.

**HISTORY: Codes, 1942, § 6466-02; Laws, 1946, ch. 366, § 2.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## § 37-29-125. Board of trustees to fix and collect fees, rents and charges; disposition of monies.

The board of trustees of any such junior college district borrowing money pursuant to the authority granted in Section 37-29-121, is hereby authorized and empowered to fix, maintain and collect fees, rentals and other charges to be paid by students, faculty members and others using, housed in or being served by any building or other housing facility erected or established under the terms and provisions of said section. All such fees, rentals and other charges shall likewise be paid into the debt retirement fund specified in Section 37-29-123, and shall be pledged for the prompt repayment of any and all indebtedness, whether of principal or interest, incurred under the provisions of said section. Nothing in Sections 37-29-121 through 37-29-127 shall be construed to authorize the levying or imposition of any taxes in excess of the limits and amounts which are now or may hereafter be provided by law.

**HISTORY: Codes, 1942, § 6466-03; Laws, 1946, ch. 366, § 3.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## § 37-29-127. Foregoing sections as cumulative.

Sections 37-29-121 through 37-29-125 shall be construed as cumulative and no restriction, limitation or prohibition of the general laws shall operate to curtail the authority or prescribe the procedure by which the purposes of said sections shall be effected.

**HISTORY: Codes, 1942, § 6466-04; Laws, 1946, ch. 366, § 4.**

## AUTHORITY TO ENTER INTO LEASE AGREEMENTS

Sec.
37-29-131. Lease limitation; machinery, equipment, furnishings, and fixtures.

Sec.
37-29-133. Option to purchase; fair market value.
37-29-135. Authority to lease for purposes of construction, repair, or rehabilitation of buildings or facilities.
37-29-137. Lessee's obligation to pay amounts due or perform covenants limited to current and specific appropriations.
37-29-139. Sections 37-29-131 through 37-29-139 full and complete authority for authorization, execution, and delivery of leases.

## § 37-29-131. Lease limitation; machinery, equipment, furnishings, and fixtures.

The board of trustees of any community or junior college is hereby authorized and empowered to enter into lease agreements or service contracts with any governmental agency or political subdivision, corporation, partnership, joint venture, or individual under which the college may acquire by lease, lease-purchase or service contract for a primary term not to exceed thirty-five (35) years lands, buildings and related facilities which the board may determine necessary to provide additional facilities, services or educational opportunities to the college, its students, faculty and the community.

Any machinery, furnishings, fixtures and equipment for these facilities and use by the college may be acquired by lease or lease purchase provided that the primary term of such lease shall not exceed the estimated useful economic life of such machinery or equipment.

**HISTORY: Laws, 1990, ch. 432, § 1; Laws, 2010, ch. 511, § 25, eff from and after passage (approved Apr. 13, 2010).**

## § 37-29-133. Option to purchase; fair market value.

All such leases shall contain an option granting the board the right to purchase the leased property upon the expiration of the primary term or upon such earlier date as may be agreed upon. With respect to leased machinery, furniture, fixtures and equipment, the purchase price shall be specified in the lease contract separately and distinctly from that portion of lease payments attributable to interest. With respect to other property, the purchase price, excluding payments attributable to interest, shall not exceed the appraised fair market value of the leased property at the time the college takes possession of the property for occupancy.

**HISTORY: Laws, 1990, ch. 432, § 2, eff from and after passage (approved March 15, 1990).**

## § 37-29-135. Authority to lease for purposes of construction, repair, or rehabilitation of buildings or facilities.

The board of trustees is authorized to lease land and/or buildings owned by the college to any governmental agency, political subdivision, corporation, partnership, joint venture, or individual for the purpose of enabling such persons to construct thereon or repair, renovate and rehabilitate any buildings or facilities the board may determine as necessary and beneficial for additional facilities, services or educational opportunities to the college, students, faculty or the community, and to lease such building and facilities to the college.

**HISTORY: Laws, 1990, ch. 432, § 3, eff from and after passage (approved March 15, 1990).**

### § 37-29-137. Lessee's obligation to pay amounts due or perform covenants limited to current and specific appropriations.

Subject to the provisions of Sections 37-29-131 through 37-29-139, any lease agreement shall be binding on the board of trustees of the college and any party thereto in accordance with its terms; provided, however, that any such lease shall include a provision that the lessee's obligation to pay any amounts due or perform any covenants requiring or resulting in the expenditure of money shall be contingent and expressly limited to the extent of any covenants requiring or resulting in the expenditure of money shall be contingent and expressly limited to the extent of any appropriation made to fund such lease agreement and that nothing contained in the lease agreement shall be construed as creating any monetary obligations on the part of the lessee beyond such current and specific support appropriations. Rentals payable by the community or junior college under leases pursuant to Sections 37-29-131 through 37-29-139, shall be payable from any revenue available for the support and enlargement, improvement, and repair of the college.

**HISTORY: Laws, 1990, ch. 432, § 4, eff from and after passage (approved March 15, 1990).**

### § 37-29-139. Sections 37-29-131 through 37-29-139 full and complete authority for authorization, execution, and delivery of leases.

Sections 37-29-131 through 37-29-139, without reference to any other statute shall be deemed to be full and complete authority for the authorization, execution and delivery of lease agreements authorized hereunder and shall be construed as an additional and alternative method; and none of the present restrictions, requirements, conditions and limitations of law applicable to acquisition, construction and drawing of buildings or facilities shall apply to lease agreements under Sections 37-29-131 through 37-29-139, and no proceeding shall be required for the authorization, execution and delivery of such leases other than those required herein, and all powers necessary to be exercised in order to carry out the provisions of Sections 37-29-131 through 37-29-139, are hereby conferred.

**HISTORY: Laws, 1990, ch. 432, § 5, eff from and after passage (approved March 15, 1990).**

## TAXATION

Sec.
37-29-141. Determination of tax rate; tuition may be fixed in lieu of taxation.
37-29-143. Receipt and expenditure of tax revenues; surety bonds by persons handling district funds.
37-29-145. Taxes shall be levied until previously issued bonds retired.

### § 37-29-141. Determination of tax rate; tuition may be fixed in lieu of taxation.

(1) The board of trustees of any junior college district is expressly authorized and empowered to make a thorough study and evaluation of the costs of operation of the junior college district, and said board shall recommend a fair and acceptable tax rate for district general support and maintenance from each of the member counties.

The board of trustees of any junior college district as constituted as of July 1, 1964, shall have the authority to recommend the tax levy necessary for a newly contributing county to have representation on the board of trustees of said junior college.

From and after October 1, 1989, no county shall levy less than (a) one (1) mill for the support, and (b) one (1) mill for the enlargement, improvement and repair of the junior college within the district of which the county is a member. From and after October 1, 1990, the board of trustees of any junior college district may, by a sixty percent (60%) affirmative vote of the members of such board, recommend an additional one (1) mill which may be used for the support or for the enlargement, improvement and repair of the junior college within the district of which the county is a member. If a county is levying more than the minimum levy required herein for one category but less than the minimum levy required for the other, then the excess millage under the one may be applied towards making up the deficiency which exists in the other. If a county contributes to two (2) junior college districts, the combined levy for both districts shall not be less than the minimums required herein.

Any county having any school district located therein with a current operating deficit of Two Hundred Thousand Dollars ($200,000.00) or more on July 1, 1989, shall not be required to levy the minimum millage required under this subsection (1) until such time as the said operating deficit is eliminated, or for a period of three (3) fiscal years, whichever is less. Provided, however, that no such county shall levy a smaller tax millage for capital improvements and general support of a junior college district than was levied for the previous year.

No county shall levy a smaller tax millage for capital improvements and general support of a junior college district than was levied for the previous year, unless requested to make such reduction by the board of trustees of the district. When a county has a general reassessment of property to increase the county ad valorem tax assessments, such county may reduce the millage for general support and capital improvements, provided that its aggregate budget for junior college purposes is not lower than was paid the previous year.

In lieu of taxation, the board of trustees may fix the amount of enrollee tuition in an amount commensurate with the per capita cost of operating the district.

(2) Taxes for the support, enlargement, improvement and repairs of junior colleges shall be levied annually against all of the property of each county and of each municipal separate school district, including added territory, which has established or may hereafter establish, or which has joined or may hereafter join, in the establishment or support of a junior college. In no case shall such levy exceed three (3) mills for support and three (3) mills for enlargement, improvement and repairs for each junior college within the district of which the county or municipal separate school district may be a component.

(3) The levy for support for any year in any given county or separate school district is that presently prevailing therein unless a change is recommended to the tax levying authorities by the board of trustees or by a vote of the people ascertained in an election called for that purpose by the tax levying authorities subsequent to the petition therefor signed by twenty percent (20%) of the qualified electors.

(4) Notwithstanding any provision of this section to the contrary, the minimum millage required under subsection (1) shall not be levied by the board of supervisors of any county within a junior college district until the board of trustees of the district adopts annually, an order, by a sixty percent (60%) affirmative vote of the members of the board, that such minimum millage shall be levied by each county within the district.

**HISTORY: Codes, 1942, §§ 6475-11, 6475-67; Laws, 1950, ch. 369, § 11; Laws, 1964, ch. 398, § 17; Laws, 1981, ch. 351, § 1; Laws, 1989, ch. 584, § 1; Laws, 1994, ch. 496, § 1, eff from and after October 1, 1994.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Homestead exemptions, see § 27-33-3.

Applicability of this section to long term borrowing, see § 37-29-103.

Use by municipality or county of tax levy authorized by subsection (2) of this section for enlargement and improvements to pay down payment or yearly installment on land or buildings purchased for junior college, see § 37-29-267.

Levy of taxes, Mississippi Gulf Coast Junior College District, see § 37-29-437.

Levy of taxes, Copiah-Lincoln Junior College District, see § 37-29-469.

Levy of taxes, Meridian Junior College District, see § 37-29-513.

Levy of taxes, Coahoma Community College District, see § 37-29-567.

## OPINIONS OF THE ATTORNEY GENERAL

Although there would be substantial increase in tax funds from levy available in 1994 due to tax exemption expiration, there was no express authority for board of supervisors to earmark surplus funds for express benefit of one particular campus of community college; funds must go into county depository and be paid out in manner prescribed by order of board of trustees of community college, pursuant to Section 37-29-143(2). Mullins, Feb. 16, 1994, A.G. Op. #93-0884.

An industry exempt under Miss. Code Section 27-31-101 is not exempt from paying the one mill ad valorem tax under Miss. Code Section 27-39-329 and is not exempt from a tax levy for junior college support under Miss. Code Section 37-29-141. Jones, Aug. 15, 1997, A.G. Op. #97-0418.

A tax levy for the support of a junior college as mandated by Section 37-29-141 is not exempted pursuant to Section 27-31-101. Burrow, Jr., Nov. 9, 2001, A.G. Op. #01-0664.

Even though it will result in a substantial increase in tax funds, the millage may not be reduced below that levied for the previous year unless the board of trustees of the community college makes a request for such a reduction. Carroll, Oct. 25, 2002, A.G. Op. #02-0611.

There is no statutory provision empowering a county board of supervisors to reduce or otherwise alter a required tax levy at meetings subsequent to the time same were duly and properly levied. Smith, Apr. 7, 2003, A.G. Op. 03-0109.

A county may not reduce its levy from one year to the next, except when requested to do so by the board of trustees of the community or junior college district of which it is a member, or in instances in which a county has had a general reassessment or reappraisal of property. A reduction in the millage rate following a general reappraisal may not result in a levy that is less than the minimum levy specified in Section 37-29-141(1). In addition, a reduction in the millage rate in the year following reappraisal must produce an amount of proceeds that is not lower than the amount paid in the previous year. Stonecypher, Oct. 7, 2005, A.G. Op. 05-0417.

In accordance with Section 57-3-33, projects and property financed under the provisions of said chapter are exempt from all taxation except taxes levied pursuant to Section 27-65-21, Sections 37-57-105 and 37-59-23, and taxes levied pursuant to Section 27-39-329 when said tax is levied expressly "for school district purposes"; a tax levied under Section 37-29-141 for the support of junior (community) college districts is not for "school district purposes." Beech, Mar. 17, 2006, A.G. Op. 06-0009.

## § 37-29-143. Receipt and expenditure of tax revenues; surety bonds by persons handling district funds.

(1)(a) Except as provided in paragraph (b) of this subsection, on or before the thirtieth day of each month, the board of supervisors of each county levying taxes pursuant to subsection (1) of Section 37-29-141, for the support and maintenance of the county's respective community college district shall transmit or have the chancery clerk transmit its warrant or warrants constituting all of the revenues received from taxation for the prior month for those purposes to the chief executive officer or president of the county's respective community college district. All such county warrants evidencing a county's annual revenue from the tax levy shall be immediately deposited in one or more banking institutions and public depositories previously selected by the board of trustees of the community college district and spread upon its official minutes.

(b) The county board of supervisors, by appropriate resolution, may designate the tax collector as the official to transmit revenues from taxes levied by the county under Section 37-29-141(1) for the support and maintenance of the county's respective community college district. If so designated, on or before the twentieth day of each month, the tax collector of each county levying such taxes shall transmit all of the revenues received from taxation for the prior month for those purposes to the chief executive officer or president of the county's respective community college district. All such revenues from the tax levy of the county shall be immediately deposited in one or more public depositories of the community college district.

(2) The board of trustees shall, by appropriate orders spread upon its minutes, authorize its chief executive officer or president to expend such funds acquired under subsection (1)(a) and (b) for lawful purposes only and in accordance with its annual budget previously adopted. The board of trustees may require its designated employees, including its president, and fiscal agents to enter into and file with the president of the college a surety bond to insure the faithful performance of the public duties of each officer or agent who is authorized to receive and expend the funds of the district. Such bond may be of such denomination and conditions as the board of trustees may deem necessary and requisite, and the premium thereon shall be paid from the funds of the district.

(3)(a) Except as provided in paragraph (b) of this subsection, all funds derived from such taxes as are provided for in subsection (2) of Section 37-29-141 shall be paid into the county depository of the county in which the community or junior college is located upon receipt warrants of the chancery clerk of said county. Such funds shall be paid out of the depository in the manner prescribed by order of the board of trustees of the community or junior college for purposes provided by statute.

(b) The county board of supervisors, by appropriate resolution, may designate the tax collector as the official to transmit funds from taxes levied by the county under Section 37-29-141(2) for the community college district. If so designated, the tax collector of each county shall transmit all funds derived from such taxes to the public depository or depositories of the community college district. Such funds shall be paid out of the depository or depositories in the manner prescribed by order of the board of trustees of the community college district for purposes provided by statute.

**HISTORY: Codes, 1942, §§ 6475-11, 6475-63; Laws, 1950, ch. 369, § 11; Laws, 1964, ch. 398, § 13; Laws, 1980, ch. 428, § 9, eff from and after passage (approved April 30, 1980); Laws, 2018, ch. 424, § 1, eff from and after July 1, 2018.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Amendment Notes —** The 2018 amendment rewrote the former first two sentences of (1), which read: "On or before the thirtieth day of each month, the board of supervisors of each county belonging to a junior college district and levying taxes pursuant to subsection (1) of Section 37-29-141, for the support and maintenance thereof shall transmit or have the chancery clerk transmit its warrant or warrants constituting all of the Revenues received from taxation for the prior month for said purposes to the chief executive officer or president of its respective junior college district. All such county warrants evidencing a county's annual income from its authorized tax levy shall be forthwith deposited in one or more banking institutions and public depositories previously selected by the board of trustees of the junior college district and spread upon its official minutes" and redesignated them (1)(a); added (1)(b); rewrote and added the former last sentence of (1), which read: "The board of trustees shall, by appropriate orders spread upon its minutes, authorize its chief executive officer or president to expend such funds for lawful purposes only and in accordance with its annual budget previously adopted," to the beginning of the former second paragraph of (1) and redesignated it (2); redesignated former (2) as (3)(a), and therein added the exception at the beginning and inserted "community or" twice; and added (3)(b).

**Cross References —** Homestead exemption, see § 27-33-1 et seq.

Receipt and expenditure of tax revenues in Meridian Junior College District, see § 37-29-515.

## OPINIONS OF THE ATTORNEY GENERAL

Although there would be substantial increase in tax funds from levy available in 1994 due to tax exemption expiration, there was no express authority for board of supervisors to earmark surplus funds for express benefit of one particular campus of community college; funds must go into county depository and be paid out in manner prescribed by order of board of trustees of community college, pursuant to Section 37-29-143(2). Mullins, Feb. 16, 1994, A.G. Op. #93-0884.

A community college that operates an agricultural high school may expend community college revenue for the support and operation of the agricultural high school. McLeod, July 2, 1999, A.G. Op. #99-0301.

## § 37-29-145. Taxes shall be levied until previously issued bonds retired.

In the event any county shall have outstanding bonds or other indebtedness which were sold or levied for the support and maintenance of a public junior college which was in operation as of July 1, 1964, and such county becomes a part of a legally constituted junior college district as provided in section 37-29-31, the board of supervisors of such county shall continue to levy taxes upon such county until such bonds or other indebtedness shall be fully paid according to the terms thereof.

**HISTORY: Codes, 1942, § 6475-64; Laws, 1964, ch. 398, § 14, eff from and after July 1, 1964.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

# VOCATIONAL AND VOCATIONAL-TECHNICAL EDUCATION

Sec.

37-29-161. Short title.
37-29-163. Declaration of intent.
37-29-165. Junior college vocational and technical training fund; expenditures from fund.
37-29-167. Applications for benefits; local matching funds; district board of trustees authorized to receive gifts.
37-29-169. Allocation of funds; review of application; certificate of necessity; disposition of application.

Sec.
37-29-171. Approval of expenditures.
37-29-173. Use of local and supporting funds.
37-29-175. Lease of facilities for industrial training of students.
37-29-177. Specialized programs in vocational and vocational-technical education shall be available to out-of-district students.
37-29-179. Repealed.

## § 37-29-161. Short title.

Sections 37-29-161 through 37-29-173 may be cited as the "Mississippi Junior College Vocational and Technical Training Law of 1964."

**HISTORY: Codes, 1942, § 6475-31; Laws, 1964, ch. 401, § 1, eff from and after its passage (approved March 26, 1964).**

**Cross References —** Cooperation in carrying out provisions regarding job development and training, see § 7-1-365.

## § 37-29-163. Declaration of intent.

It is hereby declared to be the intent of the legislature that those funds appropriated to the state building commission for the junior college vocational and technical training fund shall be expended to expand immediately and improve existing programs, to institute new programs and to provide adequate equipment and facilities for existing and new programs for vocational and technical training individually or collectively within the public junior colleges of the state. The legislature further declares its intent to be that the presently existing physical facilities of the junior colleges shall be utilized in the development and implementation of such vocational and technical training programs where possible.

**HISTORY: Codes, 1942, § 6475-33; Laws, 1964, ch. 401, § 3, eff from and after its passage (approved March 26, 1964).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

**Cross References —** Junior College vocational and technical training fund, see § 37-29-165.

## § 37-29-165. Junior college vocational and technical training fund; expenditures from fund.

There is hereby created within the state building commission a fund for the stimulation of the vocational and technical training programs of the junior colleges of the State of Mississippi. All sums of money received by the state building commission to carry out the provisions of the Mississippi Junior College Vocational and Technical Training Law of 1964 shall be maintained in the state treasury and shall constitute a fund to be known as the "junior college vocational and technical training fund". All expenditures therefrom shall be authorized by the State Building Commission in the manner set forth in Section 37-29-171. Such expenditures shall be paid therefrom by the state treasurer on warrants issued by the auditor of public accounts. Said auditor shall issue his warrant upon requisition signed by the chairman and secretary of said commission.

**HISTORY: Codes, 1942, § 6475-32; Laws, 1964, ch. 401, § 2, eff from and after its passage (approved March 26, 1964).**

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Mississippi Junior College Vocational and Technical Training Law of 1964 is codified as §§ 37-29-161 through 37-29-173.

**Cross References —** Issuance, signing and delivery of warrants for payment of claims by auditor of public accounts, see § 7-7-35.

Method by which support and maintenance funds are to be withdrawn from state treasury generally, see § 7-9-41.

State building commission generally, see § 31-11-1 et seq.

Local matching funds, see § 37-29-167.

## § 37-29-167. Applications for benefits; local matching funds; district board of trustees authorized to receive gifts.

Any state public junior college desiring any benefit available under the provisions of the Mississippi Junior College Vocational and Technical Training Law of 1964 shall make application in triplicate therefor to the Mississippi Community College Board, and submit the same in the form and manner as said commission may direct.

The board of trustees of the junior college district is required and it is empowered to allocate local matching funds on at least a fifty-fifty basis to supplement state funds, and the commission shall determine the rules and conditions appertaining to same.

The board of trustees is authorized to receive all grants, scholarships or donations in carrying out the provisions of said law.

**HISTORY: Codes, 1942, § 6475-34; Laws, 1964, ch. 401, § 4; Laws, 2014, ch. 397, § 68, eff from and after July 1, 2014.**

**Editor's Notes** — Laws of 1987, ch. 498, § 1, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

Mississippi Junior College Vocational and Technical Training Laws of 1964 is codified as §§ 37-29-161 through 37-29-173.

## § 37-29-169. Allocation of funds; review of application; certificate of necessity; disposition of application.

The formula for allocating funds to the state's public junior colleges in support of the purposes set forth in Section 37-29-163 shall be determined by the Mississippi Community College Board based upon need for the program set forth in the application.

Said board shall furnish a copy of the application to the Governor's Office of General Services and a copy to the Board of Economic Development. The Board of Economic Development shall review each application, and if said board finds and determines there exists a need for said training programs, facilities and equipment, it shall issue a certificate of necessity to the Mississippi Community College Board, which certificate of necessity shall be a prerequisite for approval.

The Mississippi Community College Board shall consider each application with reference to adequacy of the past, present and prospective use of the instruction, personnel, curriculum, equipment, budget, operation, facilities, grants, scholarships, tuition, maintenance and other similar administrative and technical data as relates to each junior college. The said board shall, by resolution or order, approve or disapprove the application.

**HISTORY: Codes, 1942, § 6475-35; Laws, 1964, ch. 401, § 5; Laws, 1986, ch. 434, § 8; Laws, 2014, ch. 397, § 22, eff from and after July 1, 2014.**

**Editor's Notes** — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 57-1-2 provides that the term "Board of Economic Development" shall mean the "Department of Economic and Community Development."

Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Mississippi Community College Board generally, see § 37-4-1 et seq.

## § 37-29-171. Approval of expenditures.

No expenditures shall be made under the provisions of the Mississippi Junior College Vocational and Technical Training Law of 1964 for the construction of new buildings, renovation or expansion of existing buildings, the purchase of any new or used instructional equipment, machinery and instructional facilities, or for any other purpose under the provisions of said law until approval of the state building commission is obtained by resolution duly entered upon its minutes.

**HISTORY: Codes, 1942, § 6475-36; Laws, 1964, ch. 401, § 6, eff from and after its passage (approved March 26, 1964).**

**Editor's Notes** — Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Mississippi Junior College Vocational and Technical Training Law of 1964 is codified as §§ 37-29-161 through 37-29-173.

## § 37-29-173. Use of local and supporting funds.

Local funds made available to the junior colleges or supporting funds allocated in support of the Mississippi Junior College Vocational and Technical Training Law of 1964, or both, may be used to supplement any other funds that may now be, or that may hereafter become, available for the purposes of carrying out the intent of said law. In no event, however, shall any expenditures be made under the provisions of said law unless the amount of local funds involved shall be equal to or exceed the amount of state funds made available for the projects or programs involved.

**HISTORY: Codes, 1942, § 6475-37; Laws, 1964, ch. 401, § 7, eff from and after its passage (approved March 26, 1964).**

## § 37-29-175. Lease of facilities for industrial training of students.

If a junior college now or hereafter establishes facilities for the industrial training of students and it appears to the board of trustees of the junior college district that the training of students will be facilitated by the continuous operation of such facilities, the trustees are authorized to lease to individual firms or corporations such facilities or a part thereof upon such terms and conditions as the trustees may approve, provided that all students desirous of securing training of the kind offered by the lessee shall be given a reasonable opportunity therefor.

**HISTORY: Codes, 1930, § 6676; 1942, § 6456; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1936, 2nd Ex Sess, ch. 11; Laws, 1968, ch. 405, § 1, eff from and after July 1, 1968.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Similar provisions authorizing such leases of industrial training facilities of agricultural high schools, see § 37-27-33.

### § 37-29-177. Specialized programs in vocational and vocational-technical education shall be available to out-of-district students.

Specialized programs in vocational and vocational-technical education which are not available to students in their home districts, but which are offered in other districts, shall be available to such students on a non-out-of-district fee basis.

**HISTORY: Codes, 1942, § 6475-25; Laws, 1962, ch. 352, § 5, eff from and after its passage (approved May 26, 1962).**

### § 37-29-179. Repealed.

Repealed by Laws, 1986, ch. 434, § 17, eff from and after July 1, 1986 (became law on April 4, 1986, without Governor's signature).

[Codes, 1942, § 6475-26; Laws, 1962, ch. 352, § 6]

**Editor's Notes** — Former Section 37-29-179 provided for the appointment of a specialist in vocational and vocational-technical education to assist junior colleges.

## NURSE TRAINING PROGRAMS

| Sec. | |
|---|---|
| 37-29-201. | Hospitals, counties and municipalities may support nurse training programs. |

### § 37-29-201. Hospitals, counties and municipalities may support nurse training programs.

The official boards of the various public supported hospitals of the State of Mississippi that conduct a nurses training program in connection with said hospitals are hereby empowered to contribute to a public supported junior college wherein said hospital is located in said junior college district for the support and maintenance of a nurses training program at said junior college. The board of supervisors of any county wherein there is a public hospital supported in whole or in part at county expense is hereby authorized and empowered to contribute to a nurses training program carried on and conducted thereat when said junior college district encompasses the county wherein the supervisors so contribute. The governing board of any municipality in this state that supports in whole or in part a hospital is hereby authorized and empowered to contribute to such a nurses training program at the public supported junior college wherein the municipality is located within the junior college district.

Any public supported junior college operating or conducting a nurses training program is hereby authorized and empowered to accept donations from private hospitals or any other persons, firms or corporations for the support of a nurses training program.

**HISTORY: Codes, 1942, § 6475-41; Laws, 1964, ch. 437, eff from and after passage (approved June 5, 1964).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## FACULTY
## [REPEALED]

Sec.
37-29-211 through 37-29-217. Repealed.

### §§ 37-29-211 through 37-29-217. Repealed.

Repealed by Laws of 2015, ch. 340, § 1, effective upon approval March 13, 2015.

§ 37-29-211. [Codes, 1942, § 6282-41; Laws, 1956, ch. 265, § 1.]
§ 37-29-213. [Codes, 1942, § 6282-42; Laws, 1956, ch. 265, § 2.]
§ 37-29-215. [Codes, 1942, § 6282-43; Laws, 1956, ch. 265, § 3.]
§ 37-29-217. [Codes, 1942, § 6282-44; Laws, 1956, ch. 265, § 4.]

**Editor's Notes** — Former § 37-29-211 required instructors, professors and other teachers in junior colleges to file an affidavit as to membership in organizations.

Former § 37-29-213 provided the form for the affidavit instructors, professors and other teachers were required to file regarding membership in organizations pursuant to former § 37-29-211.

Former § 37-29-215 provided that contracts of employment of instructors, professors and other teachers were void for failure to file the affidavit required under former § 37-29-211.

Former § 37-29-217 provided the penalty for falsely filing the affidavit required by former § 37-29-211.

## STUDENTS

| Sec. | |
|---|---|
| 37-29-231. | Students' residency and fees. |
| 37-29-232. | Criminal history record checks and fingerprinting for health care professional/vocational technical students. |
| 37-29-233. | Diplomas. |
| 37-29-235. | Junior college fraternity, sorority or secret society; definition. |
| 37-29-237. | Junior college fraternity, sorority or secret society, declared to be unlawful. |
| 37-29-239. | Junior college fraternity, sorority or secret society; unlawful for pupils to join, belong to, or participate in activities. |
| 37-29-241. | Junior college fraternity, sorority or secret society; duties of district boards of trustees. |
| 37-29-243. | Junior college fraternity, sorority or secret society; solicitation of pupils; penalty. |

## § 37-29-231. Students' residency and fees.

The provisions of Sections 37-103-1 through 37-103-29 relating to the legal residence of and tuition to be charged any student applying for admission to state educational institutions shall be applicable to the boards of trustees of each junior college district in the state and to the administrative authorities of each such junior college governed by said board.

**HISTORY: Codes, 1942, § 6800-11; Laws, 1962, ch. 355, § 1; Laws, 1968, ch. 417, § 1; ch. 418, § 1, eff from and after passage (approved August 7, 1968).**

### RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities §§ 18 et seq.

**CJS.**
14A C.J.S., Colleges and Universities § 28.

## § 37-29-232. Criminal history record checks and fingerprinting for health care professional/vocational technical students.

(1) For the purposes of this section:

(a) "Health care professional/vocational technical academic program" means an academic program in medicine, nursing, dentistry, occupational therapy, physical therapy, social services, nutrition services, speech therapy, or other allied-health professional whose purpose is to prepare professionals to render patient care services.

(b) "Health care professional/vocational technical student" means a student enrolled in a health care professional/vocational technical academic program.

(2) The dean or director of the health care professional/vocational technical academic program is authorized to ensure that criminal history record checks and fingerprinting are obtained on their students before the students begin any clinical rotation in a licensed health care entity and that the criminal history record check information and registry checks are on file at the academic institution. In order to determine the student's suitability for the clinical rotation, the student shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety, the Department of Health, or any other legally authorized entity to the FBI for a national criminal history record check. The fee for the fingerprinting and criminal history record check shall be paid by the applicant, not to exceed Fifty Dollars ($50.00); however, the academic institution in which the student is enrolled, in its discretion, may elect to pay the fee for the fingerprinting and criminal history record check on behalf of any applicant. Under no circumstances shall the academic institution representative or any individual other than the subject of the criminal history record checks disseminate information received through any such checks except insofar as required to fulfill the purposes of this section.

(3) If the fingerprinting or criminal history record checks disclose a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult that has not been reversed on appeal or for which a pardon has not been granted, the student shall not be eligible to be admitted to the health care professional/vocational technical academic program of study. Any preadmission agreement executed by the health care professional/vocational technical academic program shall be voidable if the student receives a disqualifying criminal history record check. However, the administration of the health care professional/vocational technical academic program may, in its discretion, allow any applicant aggrieved by the admissions decision under this section to appear before an appeals committee or before a hearing officer designated for that purpose, to show mitigating circumstances that may exist and allow the student to be admitted to or continue in the program of study. The health care professional/vocational technical academic program may grant waivers for those mitigating circumstances, which shall include, but not be limited to: (a) age at which the crime was committed; (b) circumstances surrounding the crime; (c) length of time since the conviction and criminal history since the conviction; (d) work history; (e) current employment and character references; (f) other evidence demonstrating the ability of the student to perform the clinical responsibilities competently and that the student does not pose a threat to the health or safety of patients in the licensed health care entities in which they will be conducting clinical experiences. The health care professional/vocational technical academic program shall provide assurance to the licensed health care entity in which the clinical rotation is planned that the results of a health care professional/vocational technical student's criminal history record check would not prohibit the student from being able to conduct his or her clinical activities in the facility, institution, or organization. The criminal history record check shall be valid for the course of academic study, provided that annual disclosure statements are provided to the health care professional/vocational technical academic program regarding any criminal activity that may have occurred during the student's tenure with the health care professional/vocational technical academic program. The criminal history record check may be repeated at the discretion of the health care professional/vocational technical academic program based on information obtained during the annual disclosure statements. In extenuating circumstances, if a criminal history record check is initiated and the results are not available at the time the clinical rotation begins, the academic institution in which the student is enrolled, at its discretion, may require a signed affidavit from the student assuring compliance with this section. The affidavit will be considered void within sixty (60) days of its signature.

(4) Criminal history record checks that are done as part of the requirements for participation in the health care professional/vocational technical academic program may not be used for any other purpose than those activities

associated with their program of study. Students who may be employed as health care professionals outside of their program of study may be required to obtain additional criminal history record checks as part of their employment agreement.

(5) No health care professional/vocational technical academic program or academic program employee shall be held liable in any admissions discrimination suit in which an allegation of discrimination is made regarding an admissions decision authorized under this section.

**HISTORY: Laws, 2004, ch. 538, § 1, eff from and after July 1, 2004.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (3). The reference to "Section 45-33-23(g)" was changed to "Section 45-33-23(h)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

**Editor's Notes —** In (3), there is a reference to "vulnerable adult." Laws of 2010, ch. 357, amended the Vulnerable Adults Act, codified as § 43-47-1 et seq, to substitute the term "vulnerable persons" for "vulnerable adults" throughout the act.

**Cross References —** Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Criminal history record checks and fingerprinting required for applicants for medical licensure, physician assistant licensure, osteopathic licensure, and podiatric licensure, and on applicants for reinstatement of a license, see §§ 73-25-3, 73-25-14, 73-25-32, 73-26-3, 73-27-5, and 73-27-12.

## § 37-29-233. Diplomas.

When a student has successfully completed the course prescribed for the freshman and sophomore years, any junior college which has been properly accredited may issue a diploma to such student, bearing the title of AN ASSOCIATE OF ARTS, AN ASSOCIATE OF AGRICULTURE, or any other appropriate title as testimonial of the completion of two years of college work.

**HISTORY: Codes, 1930, § 6696; 1942, § 6475-09; Laws, 1928, ch. 303; Laws, 1930, ch. 278; Laws, 1950, ch. 369, § 9.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

### RESEARCH REFERENCES

**ALR.**

College's power to revoke degree. 57 A.L.R.4th 1243.

## § 37-29-235. Junior college fraternity, sorority or secret society; definition.

A public junior college fraternity, sorority or secret society, as contemplated by Sections 37-29-235 through 37-29-243 is hereby defined to be any organization composed wholly, or in part, of public junior college pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such junior college on the basis of the decision of the membership of such fraternity, sorority or secret society, rather than upon the free choice of any pupil in the junior college. However, this does not apply to the Order of DeMolay or a similar organization sponsored by any branch of the Masonic Orders or like adult fraternal organization.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Similar provisions defining public high school fraternity, sorority, or secret society, see § 37-11-37.

## § 37-29-237. Junior college fraternity, sorority or secret society, declared to be unlawful.

Any public junior college fraternity, sorority, or secret society as defined in Section 37-29-235 is hereby declared to be inimical to public free schools and therefore unlawful.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Similar provision pertaining to public high school fraternities, sororities or secret societies, see § 37-11-39.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

### RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

## § 37-29-239. Junior college fraternity, sorority or secret society; unlawful for pupils to join, belong to, or participate in activities.

It shall be unlawful for any pupil attending the public junior colleges of this state to become a member of or to belong to or participate in the activities of any junior college fraternity, sorority, or secret society as defined in Section 37-29-235.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Similar provision pertaining to public high school fraternities, sororities or secret societies, see § 37-11-41.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

### RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

## § 37-29-241. Junior college fraternity, sorority or secret society; duties of district boards of trustees.

All boards of trustees of public junior college districts shall prohibit fraternities, sororities, or secret societies in all junior colleges under their respective jurisdiction. It shall be the duty of said boards of trustees to suspend or expel from said junior colleges under their control, any pupil or pupils who shall be or remain a member of, or shall join or promise to join, or who shall become pledged to become a member, or who shall solicit or encourage any other person to join, promise to join, or be pledged to become a member of, any such public junior college fraternity, sorority or secret society, as defined in Section 37-29-235.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Similar provision pertaining to public high school fraternities, sororities, or secret societies, see § 37-11-43.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

## RESEARCH REFERENCES

**ALR.**

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity. 68 A.L.R.4th 228.

## § 37-29-243. Junior college fraternity, sorority or secret society; solicitation of pupils; penalty.

It shall be unlawful for any person not enrolled in any such public junior college to solicit any pupil enrolled in any such public junior college, to join or pledge himself or herself to become a member of any such public junior college fraternity, sorority, or secret society, or to solicit any such pupil to attend a meeting thereof or any meeting where the joining of any such public junior college fraternity, sorority, or secret organization shall be encouraged.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00) for each and every offense.

**HISTORY: Codes, 1942, § 6486-01; Laws, 1946, ch. 427, §§ 1-7; Laws, 1962, ch. 358.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Similar provision pertaining to public high school fraternities, sororities or secret societies, see § 37-11-45.

Provisions allowing fraternities and sororities in state institutions of higher education, see § 37-111-1 et seq.

Imposition of standard state assessment in addition to court imposed fines or other penalties for misdemeanor violation, see § 99-19-73.

## RESEARCH REFERENCES

**ALR.**

Regulations as to fraternities and similar associations connected with educational institution. 10 A.L.R.3d 389.

## MISCELLANEOUS

| Sec. | |
|---|---|
| 37-29-261. | Board of supervisors may permit county road department employees or road district employees to assist in maintenance of campus streets. |
| 37-29-263. | Defraying costs of providing electronic data processing equipment. |
| 37-29-265. | Municipalities and municipal separate school districts may issue bonds for establishing and maintaining junior colleges. |
| 37-29-267. | Municipalities and counties may purchase land and buildings for junior college. |
| 37-29-268. | Community College Repair and Renovation Fund. |
| 37-29-269. | Relationship to county agricultural high schools. |

Sec.

| | |
|---|---|
| 37-29-271. | Abolition of high school department and confining of activities to junior college work; restoration of high school department to curriculum. |
| 37-29-272. | Transfer of agricultural high school to county board of education. |
| 37-29-273. | Attendance of county pupils at municipal junior college. |
| 37-29-275. | Application of general criminal laws of state; security officers vested with powers of constables; authorization to bear arms if certified; jurisdiction of peace officers employed by public community/junior colleges. |
| 37-29-277. | Board of trustees or educational building corporation required to purchase business interruption insurance on certain auxiliary facilities. |

## § 37-29-261. Board of supervisors may permit county road department employees or road district employees to assist in maintenance of campus streets.

The board of supervisors of any county which levies a tax for the support of a junior college district may, in its discretion, permit county road department employees or road district employees, if any, to operate county-owned equipment and machinery to assist in the maintenance of the public property on such junior college campus.

The board of trustees of the junior college district affected and the board of supervisors may agree as to the terms and conditions under which such public property may be worked and supplies or materials may be furnished.

**HISTORY: Codes, 1942, § 6475-71; Laws, 1968, ch. 389, § 1; Laws, 1983, ch. 308; Laws, 1985, ch. 311; Laws, 1988 Ex Sess, ch. 14, § 32, eff from and after October 1, 1989.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

### OPINIONS OF THE ATTORNEY GENERAL

The statute is sufficiently broad to allow the board of supervisors to assist or participate in the construction or maintenance of roads or streets for junior colleges. Shepard, June 14, 2002, A.G. Op. #02-0312.

This section was crafted to allow a county to use equipment already owned by the county and labor already in the employ of the county, but not to authorize the county to make a donation to the community college. Shepard, Oct. 18, 2002, A.G. Op. #02-0589.

## § 37-29-263. Defraying costs of providing electronic data processing equipment.

Any other provision of law to the contrary notwithstanding, the various junior colleges of the state are authorized to defray the cost of providing electronic data processing equipment out of any available funds acquired from taxes levied within the junior college district, whether designated for capital expenditures or operating costs, whether such equipment is acquired by purchase, lease or under any other form of contract. However, no such funds shall be expended unless the acquisition of such equipment has been approved by the central data processing authority.

**HISTORY: Codes, 1942, § 6486-11; Laws, 1971, ch. 444, § 1, eff from and after passage (approved March 25, 1971).**

**Editor's Notes** — Chapter 622 of Laws of 1995 (§ 25-53-3) changed the name of the "Central Data Processing Authority" (CDPA) to the "Mississippi Department of Information Technology Services" (MDITS) and provided that wherever the terms "Central Data Processing Authority" and "authority," when referring to the Central Data Processing Authority, are used in any law, the same shall mean the Mississippi Department of Information Technology Services.

### OPINIONS OF THE ATTORNEY GENERAL

Expenditures of tax proceeds by community and junior colleges for electronic data processing equipment is subject to approval by the Mississippi Department of Information Technology Services. Litchliter, Apr. 12, 2002, A.G. Op. #02-0153.

Only electronic data processing equipment purchased by community colleges with funds derived from local tax levies is subject to Department of Information Technology Services (ITS) approval; equipment purchased with other funds available to the community college is not subject to ITS approval. Lichliter, Oct. 4, 2002, A.G. Op. #02-0534.

## § 37-29-265. Municipalities and municipal separate school districts may issue bonds for establishing and maintaining junior colleges.

The municipalities of Mississippi and the municipal separate school districts in Mississippi are hereby authorized and empowered to issue municipal bonds or municipal separate school district bonds to aid in procuring the establishment, location, and maintenance of junior colleges which have been or may hereafter be established. Said bonds shall be issued as provided by law. The proceeds of the sale of said bonds may be used for the purchase of lands, buildings or for erecting buildings, or in any way to aid in the establishment and maintenance of junior colleges.

**HISTORY: Codes, 1930, § 6685; 1942, § 6465; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

**Cross References** — Similar provisions authorizing such bond issues for support of agricultural high schools, see § 37-27-63.

Issuance of school bonds generally, see § 37-59-1 et seq.

## § 37-29-267. Municipalities and counties may purchase land and buildings for junior college.

Any municipality, county or counties, acting alone or jointly with other counties or municipalities, which have organized or shall hereafter organize a junior college under the provisions of Sections 37-29-1 through 37-29-273, shall be authorized to purchase lands or buildings for such college for cash or upon the installment plan. The deferred balance shall not bear interest in excess of that allowed for tax anticipation notes in Section 75-17-105, Mississippi Code of 1972, and any deferred balance may be secured by a vendor's lien or by promissory notes and a deed of trust to be executed by the designated representative of the trustees of the junior college district. Title to such property shall be taken in the name of the trustees of such junior college district and their successors in office.

The board of supervisors of such county or counties, or in the case of a multiple county district the county or location acting alone or with one or more of the other counties, and the mayor and board of aldermen or other governing authority of such municipalities, are hereby authorized to levy annually a sufficient ad valorem tax to pay the down payment or yearly installments provided in the deed or deed of trust, or may use the three (3) mills provided in subsection (2) of Section 37-29-141, allowed for enlargement and improvements.

At the time of the purchase of said lands or buildings there shall be entered on the minutes of the board of supervisors of each county or board of aldermen or other governing authority of each municipality participating, an order specifying the amount to be paid for such property and providing for the annual installments, and obligating the governing authorities of such county, counties, or municipalities to levy annually a sufficient ad valorem tax to pay such installment. The funds collected by such tax levy shall be paid into the hands of the county superintendent of the county in which such junior college is located, and disbursed by him as said installments become due.

In the event there is, at the time of the purchase of said property, an indebtedness due secured by a lien on such property, then the board of trustees of such junior college district shall have the authority to assume such indebtedness and pay same as a part of the purchase price of said property.

The junior college district shall have the privilege of prepaying all or a portion of the deferred balance at any time without penalty, and for this purpose may use any appropriate available funds.

Unneeded land or buildings or facilities located on property so acquired may be leased, or the buildings may be sold and removed.

By the authority given in this section for the home county of a junior college district to purchase land for junior college purposes, such indebtedness incurred or funds expended cannot become a binding obligation on other counties in the junior college district unless the boards of supervisors of such counties expressly consent thereto.

**HISTORY: Codes, 1942, § 6482; Laws, 1936, ch. 259; Laws, 1964, ch. 403; Laws, 1981, ch. 462, § 9; Laws, 1982 ch. 434, § 15; Laws, 1983, ch. 541, § 20, eff from and after passage (approved April 25, 1983).**

**Editor's Notes** — Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Las of 1980, ch. 428, §

10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Title to lands, buildings and improvements of junior colleges, see § 37-29-5.

Rate of interest which notes described in this section shall bear, see § 75-17-105.

## OPINIONS OF THE ATTORNEY GENERAL

Both this section and § 37-31-75 imply legislative intent to permit a municipality to enter into a contractor agreement pursuant to § 37-31-71 et seq. that would extend past the term of the current administration of the municipality. Criss, August 7, 1998, A.G. Op. #98-0447.

The City of Grenada could convey property to a community college pursuant to this section; upon such conveyance, title would be vested in the board of trustees and the trustees' successors in office. Criss, January 22, 1999, A.G. Op. #98-0780.

## § 37-29-268. Community College Repair and Renovation Fund.

(1) There is hereby created in the State Treasury a special fund to be designated as the "Community College Repair and Renovation Fund" which shall consist of monies appropriated or otherwise made available therefor by the Legislature. Within the special fund, the State Treasury shall establish a subaccount for each community and junior college. Interest earned on monies in the special fund shall be deposited to the credit of such fund and money shall not lapse at the end of the fiscal year into the State General Fund. Money in the special fund shall be appropriated by the Legislature and allocated by the Bureau of Building, Grounds and Real Property Management, Department of Finance and Administration, for the repair, renovation and improvement of existing facilities owned by the community and junior colleges, including utility infrastructure projects; heating, ventilation and air conditioning systems; and the replacement of furniture and equipment. However, the cost of such repair, renovation and improvement for any one (1) project shall not exceed One Million Dollars ($1,000,000.00).

(2) Monies in the special fund shall be allocated to each community college's subaccount as follows:

(a) One-half (½) divided equally among the fifteen (15) public community and junior colleges; and

(b) One-half (½) divided upon the basis of the number of full-time academic, technical and vocational public community and junior college students actually enrolled and in attendance on the last day of the sixth week of the fall semester of the preceding year counting only those students who reside within the State of Mississippi. On or before December 1 of each year, the Mississippi Community College Board shall furnish the Bureau of Building, Grounds and Real Property Management, Department of Finance and Administration, the enrollment information required in this paragraph (b), including the percentage of statewide enrollment attributed to each community and junior college.

(3) For the purposes of this section, the term "furniture and equipment" shall be limited to the types of furniture and equipment items previously recorded in the community college's inventory.

**HISTORY: Laws, 1999, ch. 334, § 2; Laws, 2014, ch. 397, § 23, eff from and after July 1, 2014.**

**Cross References —** State Agency Repair and Renovation Fund, see § 29-17-4.
Institutions of Higher Learning Repair and Renovation Fund, see § 37-101-81.

## § 37-29-269. Relationship to county agricultural high schools.

Nothing in Sections 37-29-1 through 37-29-273 shall be construed to repeal any statute relating to county agricultural high schools, and it is expressly provided that such schools may be operated in conjunction with junior colleges. However, when so operated they shall be under control of the president and boards of trustees of the junior college districts.

Any agricultural high school which is not located on or adjacent to an existing junior college shall continue to be operated as heretofore and shall in no way be affected by the provisions of Sections 37-29-1 through 37-29-273.

When a junior college through the agricultural high school provides high school facilities of any school district, then the pupils from that district may be enumerated as other pupils in the common schools and the school district or county superintendent may pay to the junior college tuition such as determined by the state department of education for any other schools, and no agricultural high school funds shall be disbursed for pupils for whom such tuition is paid.

**HISTORY: Codes, 1942, §§ 6475-10, 6475-67; Laws, 1950, ch. 369, § 10; Laws, 1964, ch. 398, § 17, eff from and after July 1, 1964.**

**Editor's Notes —** Sections 37-29-11 through 37-29-17 and Section 37-29-179, referred to in this section, were repealed by Laws of 1986, ch. 434, § 17, effective from and after July 1, 1986.

Section 37-29-35, referred to in this section, was repealed by Las of 1980, ch. 428, § 10, effective from and after passage (approved April 30, 1980).

Section 37-29-83, referred to in this section, was repealed by Laws of 1990, ch. 518, § 17, effective from and after October 1, 1993.

Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Agricultural high schools generally, see § 37-27-1 et seq.

Establishment of junior college in connection with agricultural high school outside county, see § 37-27-37.

### OPINIONS OF THE ATTORNEY GENERAL

Under Section 37-29-269, community college trustees sitting as the governing board of its Agricultural High School would not be required to post surety bonds because the agricultural high school governing board has been merged into that of the community college. Bradley, May 15, 1996, A.G. Op. #96-0279.

A community college that operates an agricultural high school may expend community college revenue for the support and operation of the agricultural high school. McLeod, July 2, 1999, A.G. Op. #99-0301.

## § 37-29-271. Abolition of high school department and confining of activities to junior college work; restoration of high school department to curriculum.

Where any agricultural high school has extended its curriculum, so as to include freshman and sophomore years of college work, the board of trustees of the agricultural high school, with the approval of the county board of education of the county in which the school is located, may abolish all its high school work and confine its activities to junior college work. Where the high school department is abolished in any agricultural high school-junior college under the provisions of this section, and it later appears that it would be to the interest of the agricultural high school-junior college and the county in which the school is located, the board of trustees of the agricultural high school of the county in which the school is located, may, in its discretion, with the consent of the county board of education restore all or any part of the high school department to the curriculum of the agricultural high school-junior college.

When any agricultural high school-junior college abolishes its high school department as provided in this section all laws relating to agricultural high school for tax levies for the support of the school, and all other laws relating to the government and management of agricultural high schools and agricultural high school-junior colleges, not inconsistent with the provisions of this section, shall continue in full force and effect for the junior college department of said school.

**HISTORY: Codes, 1942, § 6483; Laws, 1934, ch. 266; Laws, 1940, ch. 193.**

**Cross References —** Agricultural high schools generally, see § 37-27-1 et seq.

Establishment of junior college in connection with agricultural high school outside county, see § 37-27-37.

## § 37-29-272. Transfer of agricultural high school to county board of education.

The board of trustees of any community college district in the state maintaining and operating an agricultural high school on July 1, 1994, is hereby authorized to transfer the control, maintenance and operation of said agricultural high school, including the transfer of title to all real and personal property used for agricultural high school purposes, to the county board of education of the county in which the school is located. Upon the acceptance by the county board of education and before an order authorizing such transfer shall be entered, the board of trustees of the community college district and the county board of education in which such school is located shall by joint resolution agree in writing on the terms of such transfer, the extent of the rights of use and occupancy of the school and grounds, and the control, management, preservation and responsibility of transportation of students to such premises, to be spread upon the minutes of each governing authority. Upon such transfer, the county board of education may abolish the agricultural high school as a distinct school, and merge its activities, programs and students into the regular high school curricula of the school district. When a community college has transferred operation of an agricultural high school as provided herein, the pupils attending such school shall be reported, accounted for allocation of minimum education program funds and entitled to school transportation as though such pupils were attending the schools of the school district in which they reside, as provided in Sections 37-27-53 and 37-27-55, Mississippi Code of 1972. When any agricultural high school is transferred by the board of trustees of a community college to the county board of education as provided in this section, all laws relating to agricultural high school tax levies for the support or retirement of bonded indebtedness for agricultural high schools shall continue in full force and effect for the transferring community college district until current obligations on all bonded indebtednesses related to agriculture high schools have been satisfied and retired.

**HISTORY: Laws, 1994, ch. 581, § 50, eff from and after July 1, 1994.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Agricultural high schools generally, see § 37-27-1 et seq.

## § 37-29-273. Attendance of county pupils at municipal junior college.

The county superintendent of education of a county in which there is located and operated a legally constituted municipal junior college may provide for the attendance of pupils residing in the county of which he is superintendent of education at such municipal junior college, and pay for same by certificate drawn by him on the special junior college fund. Said fund shall be raised by a levy made by the board of supervisors upon the recommendation of the county board of education. However, the amount so paid shall not be greater than the pro rata share of such pupils in the actual cost of incidentals and tuition of such municipal junior college.

**HISTORY: Codes, 1942, § 6486; Laws, 1938, ch. 216.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any

reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Assignment to schools or attendance centers of school children generally, see § 37-15-13 et seq.

Agricultural high schools generally, see § 37-27-1 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Most agricultural high schools have been subsumed into community college systems which administer them; therefore, members of community college board who operate agricultural high school are not required to attend training sessions required for school board members of local school districts; only agricultural high school operated by board of trustees independent of community college would be required to meet training requirements of Section 37-7-306. Bradley Sept. 9, 1993, A.G. Op. #93-0643.

## § 37-29-275. Application of general criminal laws of state; security officers vested with powers of constables; authorization to bear arms if certified; jurisdiction of peace officers employed by public community/junior colleges.

Any act, which, if committed within the limits of a city, town or village, or in any public place, would be a violation of the general laws of this state, shall be criminal and punishable if done on the campus, grounds or roads of any of the state-supported junior colleges. The peace officers duly appointed by the board of trustees of state-supported community or junior colleges or officers of private security firms licensed by the State of Mississippi contracted by the boards of trustees of state supported community/junior colleges are vested with the powers and subjected to the duties of a constable for the purpose of preventing and punishing all violations of law on state-supported junior college grounds and for preserving order and decorum thereon. Peace officers appointed by the boards of trustees or officers of private security firms licensed by the State of Mississippi contracted by the boards of trustees shall have authority to bear arms in order to carry out their law enforcement responsibilities if such officers have been certified according to the minimum standards established by the Board on Law Enforcement Officer Standards and Training. The peace officers duly appointed by the boards of trustees of public community/junior colleges are also vested with the powers and subjected to the duties of a constable for the purpose of preventing all violations of law that occur within five hundred (500) feet of any property owned by the college, if reasonably determined to have a possible impact on the safety of students, faculty or staff of the college while on said property. Provided, however, that nothing in this section shall be interpreted to require action by any such peace officer appointed by a college to events occurring outside the boundaries of college property, nor shall any such college or its employees be liable for any failure to act to any event occurring outside the boundaries of property owned by the college. If a law enforcement officer is duly appointed to be a peace officer by a college under this section, the board of trustees of the public community/junior college may enter into an interlocal agreement with other law enforcement entities for the provision of equipment or traffic control duties, however, the duty to enforce traffic regulations and to enforce the laws of the state or municipality off of college property lies with the local police or sheriff's department which cannot withhold its services solely because of the lack of such an agreement.

**HISTORY: Codes, 1942, § 6706; Laws, 1972, ch. 311, § 1; Laws, 1994, ch. 644, § 1; Laws, 2007, ch. 599, § 2, eff from and after July 1, 2007.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 37-29-275 makes it clear that state's criminal laws are applicable on junior or community college campuses, and that campus police, appointed by authorities of junior or community colleges, have authority of constable to enforce state's criminal laws; also, municipal police officer may enforce state's criminal laws on campus of junior or community college that is within corporate limits of municipality; however, municipality may not extend its regulatory ordinances over conduct on campus, for example, as to open container or curfew laws. Carroll, Mar. 31, 1993, A.G. Op. #93-0165.

Campus police officers are not municipal officers and therefore do not have the authority to bring violations of state law to the municipal court; citations and affidavits by campus police should be filed with justice court. Coker, Feb. 8, 2002, A.G. Op. #02-0043.

Campus security may use their official vehicles to make routine traffic stops inside the boundaries of the college grounds. Davis, Mar. 4, 2005, A.G. Op. 05-0035.

Community college campus police are subject to rules and regulations of their college's Board of Trustees as well as any rules and regulations of the State Board of Community and Junior Colleges and state statues relating thereto. Davis, Mar. 4, 2005, A.G. Op. 05-0035.

Regulations of the Board on Law Enforcement Officers Standards and Training as to installation of blue lights on patrol cars are a good guideline for campus police to follow. Davis, Mar. 4, 2005, A.G. Op. 05-0035.

Patrol cars of campus police should be marked so as to clearly identify that the vehicle is being used in an official capacity. Davis, Mar. 4, 2005, A.G. Op. 05-0035.

Both certified and non-certified officers on community/junior colleges grounds are vested with the powers and subjected with the duties of a constable as set forth in Section 37-29-275; however, only certified officers are permitted to bear arms in carrying out their duties. Lee, Apr. 29, 2005, A.G. Op. 05-0081.

Since campus police officers are vested with the powers of a constable, a campus police department should obtain uniform traffic tickets from the chancery clerk of the county. Via, Oct. 28, 2005, A.G. Op. 05-0522.

Community college police have the powers of a constable pursuant to Miss Code Ann. § 37-29-275 and are authorized to enforce state laws within their jurisdiction, but do not have authority to enforce municipal or campus ordinances on municipal streets that run through the campus. Campus police officers may assist in the enforcement of municipal parking ordinances on municipal streets by notifying municipal authorities when violations occur. A determination of the validity of "campus tickets" may only be made by a court of competent jurisdiction. Graham, March 16, 2007, A.G. Op. #07-00138, 2007 Miss. AG LEXIS 102.

### § 37-29-277. Board of trustees or educational building corporation required to purchase business interruption insurance on certain auxiliary facilities.

When the board of trustees of any community or junior college or educational building corporation created under Sections 37-29-601 through 37-29-613 acquires auxiliary facilities by lease, lease-purchase or service contract, or borrows money to purchase the property, the board of trustees or educational building corporation shall obtain business interruption insurance in an amount sufficient to pay lease payments or debt service payments for the period of time required to restore or rebuild leased or financed facilities damaged or destroyed by a catastrophic event such as a fire, storm, tornado or earthquake.

**HISTORY: Laws, 2010, ch. 511, § 26, eff from and after passage (approved Apr. 13, 2010).**

## FUNDING FOR COMMUNITY AND JUNIOR COLLEGES

Sec.
37-29-301. Legislative findings and declarations.
37-29-303. Definitions.
37-29-305. Calculation of funding; use of information from SREB State Data Exchange.

### § 37-29-301. Legislative findings and declarations.

The Legislature finds and declares as follows:

(a) Mississippi's public community and junior colleges are Mississippi's best educational buy. An education at Mississippi's community and junior colleges is affordable and accessible to all. Mississippians have an option to attend a community or junior college close to home, with smaller class sizes and at approximately one-half (½) the cost of tuition at a public four-year institution;

(b) In recent fiscal years, appropriations for community and junior colleges have not kept pace with increases appropriated to Grades K-12 and the institutions of higher learning;

(c) A need exists to provide adequate funding for Mississippi's community and junior colleges; and

(d) Adequate funding should be accomplished through appropriate funding on a full-time equivalency (FTE) basis.

**HISTORY: Laws, 2007, ch. 566, § 1, eff from and after July 1, 2007.**

**Editor's Notes** — Laws of 2007, ch. 566, § 4 provides as follows:
"SECTION 4. This act shall be codified in Chapter 29, Title 37, Mississippi Code of 1972."

**Cross References** — Full-time equivalent (FTE) enrollment defined, see § 37-29-303.

## § 37-29-303. Definitions.

As used in Sections 37-29-301 through 37-29-305, the following terms shall be defined as provided in this section:

(a) "Full-time equivalent (FTE) enrollment" means the process by which the Southern Regional Education Board (SREB) calculates FTE by taking total undergraduate semester credit hours divided by thirty (30); total undergraduate quarter hours divided by forty-five (45); total graduate semester credit hours divided by twenty-four (24); and total graduate quarter hours divided by thirty-six (36).

(b) "State funds" means all funds appropriated by the Legislature including funds from the State General Fund, Education Enhancement Fund, Budget Contingency Fund and Health Care Expendable Fund.

(c) "E G operations" means education and general expenses of the colleges and universities.

(d) "Average daily attendance (ADA)" means the figure that results when the total aggregate attendance during the period or months counted is divided by the number of days during the period or months counted upon which both teachers and pupils are in regular attendance for scheduled classroom instruction, less the average daily attendance for self-contained special education classes and, before full implementation of the Mississippi Adequate Education Program, the State Department of Education shall deduct the average attendance of the alternative school program provided for in Section 37-19-22.

**HISTORY: Laws, 2007, ch. 566, § 2, eff from and after July 1, 2007.**

**Editor's Notes —** Laws of 2007, ch. 566, § 4 provides as follows:

"SECTION 4. This act shall be codified in Chapter 29, Title 37, Mississippi Code of 1972."

**Cross References —** Budget contingency fund, see § 27-103-301.

Education enhancement fund, see § 37-61-33.

Mississippi Adequate Education Program, see §§ 37-151-1 et seq.

Health care expendable fund, see § 43-13-407.

## § 37-29-305. Calculation of funding; use of information from SREB State Data Exchange.

(1) In funding community and junior colleges, the actual amount of the annual appropriation of the community and junior colleges general support bill shall be computed as follows:

(a) Calculate the state funding per student for Grades K-12 by dividing the total revenue from state funds by the ADA. Both the funding and ADA figures shall be provided by the State Department of Education.

(b) Calculate the state funding per FTE for regional universities by dividing the state funds for E G operations by FTE enrollment. Both funding and enrollment figures shall come from the SREB State Data Exchange.

(c) Mid-level funding for community and junior colleges shall be the average as computed from paragraphs (a) and (b) of this subsection multiplied by the total community and junior college FTEs. This amount shall be appropriated annually by the Legislature to the community and junior colleges.

(2) Data used in the calculation of paragraphs (a), (b) and (c) of subsection (1) shall be the most current available data utilizing the same fiscal year for all entities involved. Information from the SREB State Data Exchange shall be used to ensure common denominators in the calculation of FTE enrollment and to ensure consistent reporting of financial data.

**HISTORY: Laws, 2007, ch. 566, § 3, eff from and after July 1, 2007.**

**Editor's Notes** — Laws of 2007, ch. 566, § 4 provides as follows:
"SECTION 4. This act shall be codified in Chapter 29, Title 37, Mississippi Code of 1972."

**Cross References** — ADA, E & G operations, and full-time equivalent (FTE) enrollment defined, see § 37-29-303.

## MISSISSIPPI GULF COAST JUNIOR COLLEGE DISTRICT

| Sec. | |
|---|---|
| 37-29-401. | Mississippi Gulf Coast Junior College District created. |
| 37-29-403. | Transfer of property to junior college district. |
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### § 37-29-401. Mississippi Gulf Coast Junior College District created.

There is hereby created a junior college district comprised of the territory lying within Harrison, Stone, George and Jackson Counties and having boundaries coinciding with the external boundaries thereof.

The name of the said junior college district shall be the Mississippi Gulf Coast Junior College District of Mississippi and the said district shall be and the same is hereby constituted a legal political governmental subdivision and a body corporate.

**HISTORY: Laws, 1962, ch. 381, §§ 1, 2.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.
**Cross References —** Creation of junior college districts generally, see § 37-29-31.

## § 37-29-403. Transfer of property to junior college district.

All of the property belonging to the board of trustees of Perkinston Junior College and all of the property belonging to either or all of the counties prior to and as of May 10, 1962, cooperating in the Perkinston Junior College or the agricultural high school-junior college located at Perkinston, Mississippi and utilized or held for the present or future use and benefit of said junior college and/or agricultural high school-junior college shall be and the same is hereby transferred to and vested in the Mississippi Gulf Coast Junior College District.

**HISTORY: Laws, 1962, ch. 381, § 3.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.
**Cross References —** Transfer of property of existing institutions to boards of trustees of junior colleges generally, see § 37-29-33.
Transfer of property to Copiah-Lincoln Junior College District, see § 37-29-471.
Transfer of property to Meridian Junior College District, see § 37-29-503.
Transfer of property to Coahoma Community College District, see § 37-29-569.

## § 37-29-405. President.

The Mississippi Gulf Coast Junior College District shall be under the executive direction of a president elected by the board of trustees of said district.

**HISTORY: Laws, 1962, ch. 381, § 7.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.
**Cross References —** Office of president of junior colleges generally, see § 37-29-61.
President of the Copiah-Lincoln Junior College District, see § 37-29-453.

## § 37-29-407. Powers of president.

The president of the junior college shall have the power to recommend to the trustees all teachers to be employed and he may remove or suspend any member of the faculty subject to the approval of the trustees. He shall be the general manager of all fiscal and administrative affairs of the district with full authority to select, direct, employ and discharge any and all employees other than teachers.

The president shall have the authority, subject to the provisions of Sections 37-29-401 through 37-29-437 and the approval of the trustees, to arrange and survey courses of study, fix schedules, and establish and enforce rules and discipline for the governing of teachers and students. He shall be the general custodian of the property of the district.

**HISTORY: Laws, 1962, ch. 381, § 8.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Powers of presidents of junior colleges generally, see § 37-29-63.

Powers of the president, Copiah-Lincoln Junior College District, see § 37-29-455.

Powers of the president, Mendian Junior College District, see § 37-29-509.

Powers of the president, Coahoma Community College District, see § 37-29-555.

## § 37-29-409. Selection of trustees; terms.

The operation and control of the Mississippi Gulf Coast Junior College District and the college or colleges operated therein shall be vested in a board of trustees representing each of the four (4) counties lying within the district. The board of trustees shall consist of twenty-three (23) members. Of the said number Harrison County shall be entitled to eight (8) members, Stone County shall be entitled to three (3) members, George County shall be entitled to three (3) members and Jackson County shall be entitled to eight (8) members. In no event in the future shall any of the counties have more than the number hereinabove established. The members of the board of trustees from each county shall be elected by the board of supervisors of the county. Except as hereinafter specified the term of office of each trustee shall be five (5) years. The members of the board of trustees serving on July 1, 1989, shall continue to serve until their terms expire. All shall be appointed for a term of five (5) years each. There shall be one (1) additional member of the board who shall be selected by the members of the board of trustees who shall reside alternatively in Jackson and Harrison Counties, with the initial appointment to be made from Jackson County for a term of five (5) years.

**HISTORY: Laws, 1962, ch. 381, § 4; Laws, 1989, ch. 575, § 2, eff from and after July 1, 1989.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Number of trustees for junior colleges in general, see

§ 37-29-65.

Selection of trustees, Copiah-Lincoln Junior College District, see § 37-29-457.

## § 37-29-411. General powers and duties of trustees.

The Board of Trustees of the Mississippi Gulf Coast Junior College District shall have the powers to do all things necessary to the successful operation of the said district and the college or colleges or attendance centers located therein.

The several colleges of the said district shall be under the direction of the board of trustees and the president and under the local supervision of a dean. The board of trustees shall, by resolution or order, provide for the government, maintenance and operation of each of the colleges within the district.

The said junior college district shall have all the powers of other junior college districts or junior colleges in the State of Mississippi and the delineation and enumeration of the powers and purposes set out in Sections 37-29-401 through 37-29-437 shall be deemed to be supplemental and additional and shall not be construed to restrict the powers of the governing authorities of the district or of any college located therein so as to deny to the said district and the colleges therein the rights, privileges and powers enjoyed by other junior colleges and junior college districts in the State of Mississippi.

The said junior college district shall remain subject to the jurisdiction and control of the Mississippi Community College Board as now established or as the same may be hereafter changed by law, and shall be subject to all rules and regulations and all statutory limitations which are now in effect or may hereafter be imposed, except as the same may be in direct conflict with the provisions of Sections 37-29-401 through 37-29-437.

**HISTORY: Laws, 1962, ch. 381, §§ 5, 7, 14; Laws, 1968, ch. 390, § 1; Laws, 1986, ch. 434, § 9; Laws, 2014, ch. 397, § 24, eff from and after July 1, 2014.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Powers and duties of trustees of junior college districts generally, see § 37-29-67.

Powers and duties of trustees of Copiah-Lincoln Junior College District, see § 37-29-459.

Powers and duties of trustees, Meridian Junior College District, see § 37-29-507.

Powers and duties of trustees, Coahoma Community College District, see §§ 37-29-559, 37-29-563.

## § 37-29-413. Junior college attendance centers.

The Mississippi Gulf Coast Junior College District is hereby authorized and empowered to operate junior college attendance centers at Perkinston, Mississippi, in the vicinity of Gulfport and Biloxi and in the vicinity of Pascagoula and Moss Point and at such other places within the district, subject to the approval of the Mississippi Community College Board, as the board of trustees shall determine to be in the best interest of the district.

**HISTORY: Laws, 1962, ch. 381, § 7; Laws, 1986, ch. 434, § 10; Laws, 2014, ch. 397, § 25, eff from and after July 1, 2014.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Mississippi Community College Board generally, § 37-4-1 et seq.

Junior college attendance centers generally, see § 37-29-69.

## § 37-29-415. Preparation of budget.

The board of trustees of the Mississippi Gulf Coast Junior College District shall, on or before the fifteenth day of June each year, prepare and file the annual budget of the district. The said budget shall contain a detailed estimate of the revenues and expenses anticipated for the ensuing year for general operation and maintenance and shall set forth the reasonable requirements for anticipated needs for capital outlays for land, buildings, initial equipment for new buildings and major repairs, a reasonable accumulation for such purposes being hereby expressly authorized. Funds derived from the levy for capital outlay shall be kept in a separate account and expended for capital outlay purposes only.

**HISTORY: Laws, 1962, ch. 381, § 5; Laws, 1968, ch. 390, § 1.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Preparation of budgets of junior college districts generally, see § 37-29-71.

Preparation of budget of Copiah-Lincoln Junior College District, see § 37-29-463.

Preparation of budget, Meridian Junior College District, see § 37-29-511.

Preparation of budget, Coahoma Community College District, see § 37-29-561.

## § 37-29-417. Execution of oil, gas and mineral leases.

The trustees of the Mississippi Gulf Coast Junior College District are authorized to execute oil, gas and mineral leases on any of the property of the district but such leases shall not extend for a term beyond five years unless oil, gas or other minerals shall be in production under said leases at the expiration of said period. The terms and conditions of said lease, within the limitations above set out, shall be for the determination and within the discretion of the trustees.

**HISTORY: Laws, 1962, ch. 381, § 12.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any

reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Execution of oil, gas and mineral leases by trustees of junior college districts generally, see § 37-29-73.

## § 37-29-419. Sales of surplus real and personal property.

When any land or other property owned by the Mississippi Gulf Coast Junior College District shall cease to be used or needed by the district, the same may be sold by the board of trustees upon sealed bids after three weeks' advertisement in a newspaper in the county where the said property is located. Personal property having a value determined by the board of less than Five Hundred Dollars ($500.00) may be sold without such advertisement; however, in such event notice shall be posted in at least three public places in the county where such property is situated or where it is to be sold, giving notice of the time and place of such sale, and such property shall be sold to the highest and best bidder for cash. Such notice shall be posted for ten days before the sale.

**HISTORY: Laws, 1962, ch. 381, § 13.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Sales of surplus real and personal property by trustees of junior college districts generally, see § 37-29-75.

## § 37-29-421. Transportation of pupils.

The Mississippi Gulf Coast Junior College District is charged with the responsibility for providing pre-professional courses, liberal arts, technical, vocational, and adult education courses and shall undertake to provide the same as conveniently as is possible to the residents of the district and to this end the board of trustees is authorized and empowered to transport such students as, in its discretion, should be transported in the best interest of the district.

**HISTORY: Laws, 1962, ch. 381, § 9.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Transportation of pupils of junior college districts generally, see § 37-29-79.

Transportation of pupils, Copiah-Lincoln Junior College District, see § 37-29-467.

Transportation of pupils, Coahoma Community College District, see § 37-29-565.

## § 37-29-423. Fees and tuition.

The Mississippi Gulf Coast Junior College District, in the discretion of the board of trustees, may charge fees and tuitions in accordance with Section 37-103-25.

**HISTORY: Laws, 1962, ch. 381, § 11; Laws, 2003, ch. 364, § 3, eff from and after July 1, 2003.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Fees and tuition of junior college districts generally, see § 37-29-81.

## § 37-29-425. Borrowing in anticipation of taxes.

The board of trustees of the Mississippi Gulf Coast Junior College District may borrow money in anticipation of taxes not to exceed fifty percent (50%) of the previous year's ad valorem tax receipts for the purpose of paying any expenses authorized by law for the operation, maintenance and support of the colleges. The loan shall be evidenced by note or notes bearing the signature of the president and of the secretary of the board of trustees and the seal of the college shall be thereon impressed. Said notes shall mature not later than the first day of April next thereafter and the same shall not bear interest in excess of that allowed in Section 75-17-105, Mississippi Code of 1972.

**HISTORY: Laws, 1962, ch. 381, § 10; Laws, 1981, ch. 533, § 1; Laws, 1982, ch. 434, § 16; Laws, 1983, ch. 541, § 21, eff from and after passage (approved April 25, 1983).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Borrowing in anticipation of taxes by trustees of junior college districts generally, see § 37-29-101.

Rate of interest which notes described in this section must bear, see § 75-17-105.

## § 37-29-427. Utilization of available funds for commencement of projects for which bonds have been authorized.

In the event that bonds shall have been authorized for projects determined by the board of trustees of the Mississippi Gulf Coast Junior College District and such bonds validated, the board of trustees is authorized to utilize any available funds for the immediate commencement of such project and to reimburse the funds from which any such expenditures are made from the proceeds of the bonds when the same are received.

**HISTORY: Laws, 1962, ch. 381, § 10.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any

reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Utilization by trustees of junior college districts of available funds to commence projects for which bonds have been authorized generally, see § 37-29-105.

### § 37-29-429. Issuance of bonds; authorized purposes; resolution of board of trustees; election pursuant to board's request.

When the board of trustees of the Mississippi Gulf Coast Junior College District shall determine that it is necessary to procure additional funds by issuance of bonds for the purpose of making capital outlays for the construction and equipping of buildings, athletic fields, other structures, and related facilities, or for making repairs or providing funds for use in conjunction with funds provided by or available from any governmental, public or private source by loan, donation, matching program or grant, it may adopt a resolution declaring the necessity for said funds, that the same are unavailable from other sources and declare the purpose for which said funds are required and to be expended which purposes may, in addition to the foregoing, include any and all of the purposes for which school district bonds may be issued. In its said resolution the board of trustees shall determine and adjudge that the said bonds when issued will not result in the imposition on the property of the district of an indebtedness of more than five percent of the assessed valuation of the taxable property in the junior college district for junior college purposes, according to the latest completed assessment for taxation, shall specify the maximum amount in which said bonds may be issued, give the general proposed schedule of maturities and the details with respect to said bonds. In all matters where not otherwise herein provided the said bonds shall conform to the provisions of law governing school district bonds. Upon request of the board of trustees the clerk of the chancery court of each county shall furnish his certificate showing the totals of the latest completed assessment for taxation of all taxable property of the county, including motor vehicles.

Said resolution may call upon the boards of supervisors of the several counties to require an election to be called to determine whether or not the said bonds shall be issued or it may, in the discretion of said board of trustees, determine to issue the said bonds unless protest shall be filed and an election called pursuant thereto as set out in Section 37-29-431. In the event that the board of trustees shall determine to cause an election to be called as above mentioned, the election shall be held and the results thereof ascertained and given effect in the manner as is set out in Section 37-29-431 and provided for in cases where an election is called upon the petition of twenty percent (20%) of the qualified electors of the county.

Prior to its resolution determining to issue said bonds or call an election thereon, the board of trustees of the junior college district shall inform the board of supervisors of each of the counties of its proposal and may be required, by the board of supervisors of any county, to cause to be made a survey, by one or more impartial experts, of the building needs of the district, setting out the same in the order of priority. If such a survey has been conducted within the past twenty-four (24) months a new one shall not be required but the board of supervisors for the several counties shall be furnished with copies of the survey.

**HISTORY: Laws, 1962, ch. 381, § 6.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Issuance of bonds by trustees of junior college districts generally, see § 37-29-101 et seq.

## § 37-29-431. Issuance of bonds, procedure where board of trustees elects itself not to cause an election to be held.

If the board of trustees of the Mississippi Gulf Coast Junior College District shall not elect itself to cause an election to be held, it shall immediately upon the adoption of the resolution mentioned in Section 37-29-429 certify the same to the boards of supervisors of each county and immediately cause notice of the proposed issuance of said bonds to be published once a week for three (3) consecutive weeks in each of the four (4) counties of the district in a newspaper having general circulation therein. Said notice shall state that the determination to issue said bonds has been made by the board of trustees and the same will be issued unless, within thirty (30) days after the first publication of said notice, a petition signed by at least ten percent (10%) or twenty-five hundred (2500), whichever is less, of the qualified electors of the county shall be filed with the board of supervisors of the county protesting against the issuance of said bonds and seeking an election with respect thereto. If no protest be filed, the clerk of the board of supervisors shall immediately so certify to the secretary of the board of trustees of the junior college district and the said bonds may be then issued as proposed.

If ten percent (10%) or twenty-five hundred (2500), whichever is less, of the qualified electors of any of the counties shall file their protest with the clerk of the board of supervisors of the county demanding an election on the issuance of said bonds, the board of supervisors shall promptly meet and consider said petition. If the said board shall find the petition to be sufficient, it shall enter an order directing the election commission of said county to cause an election to be held in the said county, fixing the date therefor in the order, to determine whether or not bonds shall be issued for the purposes set out in the resolution of the board of trustees and in the maximum amount therein provided. It shall thereupon become the duty of the election commissioners of the county to hold said election on the date fixed by the board of supervisors. Said election shall be held as nearly as is practicable in accordance with the laws governing general elections, and three (3) weeks notice of said election shall be given by publication in a newspaper having general circulation in the county. The ballot used shall substantially describe the bond issue proposal and electors shall be permitted to vote for the bond issue or against the bond issue.

Within three (3) days, Sundays and legal holidays excluded, after the holding of said election, the election commissioners shall certify to the board of trustees of the junior college district and to the board of supervisors of the county the result of said election. If after all of the elections have been held in the counties where the same have been called and the results thereof duly certified, the board of trustees shall determine that the majority of the qualified electors voting in any two (2) counties of the district, one (1) of which shall border on the Gulf of Mexico, shall have voted for the said bond issue, then the said bonds may be issued; otherwise the said bonds shall not be issued as proposed.

If an election on the issuance of the bonds shall have been called in any county and it shall appear that no elections are being called in other counties or in a sufficient number of counties to result in an effective election, then the board of supervisors of the county having called the election may give notice of the cancellation thereof at any time prior to the actual date of said election.

**HISTORY: Laws, 1962, ch. 381, § 6; Laws, 1980, ch. 554, eff from and after July 1, 1980.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Issuance of bonds by trustees of junior college districts, generally, see § 37-29-101 et seq.

## § 37-29-433. Issuance of bonds; validation and sale.

If it shall be determined to proceed with the issuance of the said bonds the same may be validated and sold as other bonds of the county or counties except that the sale shall be made by the board of trustees of the Mississippi Gulf Coast Junior College District and the validation proceedings may be held before the chancery court of any county of the district. Notice of the validation herein shall, however, be published as provided by law in each of the counties of the district.

**HISTORY: Laws, 1962, ch. 381, § 6.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## § 37-29-435. Bonds issued are full faith and credit bonds of District; levy of tax.

All bonds issued by authority of Sections 37-29-401 through 37-29-437 shall be full faith and credit bonds of the Mississippi Gulf Coast Junior College

District. It shall be the duty of the board of trustees to request and the county board of supervisors to levy annually a tax on all of the taxable property of each county in the district sufficient to meet the principal and interest falling due on said bonds during the year for which said taxes are levied.

**HISTORY: Laws, 1962, ch. 381, § 6.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## § 37-29-437. Taxation.

After the budget shall have been prepared as is provided for in Section 37-29-415, the board of trustees of the Mississippi Gulf Coast Junior College District shall certify the same in writing to the boards of supervisors of the several counties and shall certify to the said boards of supervisors the number of mills of ad valorem taxation required to make provisions for the revenue required in said budget. It shall thereupon become the duty of the board of supervisors of each of the four counties to levy the taxes in the number of mills specified by the board of trustees. The tax levy for maintenance and operation of the district shall not exceed four mills nor shall the levy for capital outlay, including purchase of lands, construction and equipment of buildings and structures, making of major repairs, and for the retirement of bonds, exceed three mills.

Promptly upon having certified the requirements of the district to the several boards of supervisors the board of trustees of the district shall cause publication of notice to be made in each county in a newspaper published or having general circulation therein giving notice of the filing of the request for the levy aforesaid. Said notice shall be published at least one time and within ten days after the certification of the request for such levy to the boards of supervisors. The said notice shall provide that the said levy requested will be made in each county unless a petition signed by twenty percent (20%) of the qualified electors of the district shall be filed with the secretary of the board of trustees of the said district within thirty (30) days from the date of the first publication protesting against the said levy and demanding an election thereon. In the event of the filing of such a petition, it shall be the duty of the secretary forthwith to call a special meeting of the board of trustees of the district setting forth the fact of the filing of such petition in the notice of the call and the said board shall promptly meet and consider the said petition. If it shall find that the same does in fact protest against the said levies and is in fact signed by at least twenty percent (20%) of the qualified electors of the said district, it shall then so certify to the boards of supervisors of the several counties. As early as possible but not later than fifteen (15) days after the receipt of such notice, it shall be the duty of the board of supervisors of each county to enter an order directing the election commissioners of the county to proceed to hold an election in all of the voting precincts of said county to determine whether or not the levy shall be made as requested by the board of trustees of the district.

The said election shall be held within thirty (30) days from the date of the said order of the board of supervisors requesting that the same be called and notice thereof shall be published once a week for three (3) weeks during the period between the order directing the election commissioners to hold the same and the actual date thereof.

The election shall be held in accordance with the laws governing general elections as nearly as is practicable and the election commissioners of each county shall, promptly after the holding of said election, certify to the secretary of the board of trustees of the district the result thereof in each county, certifying also the number of qualified electors in each county on the date of the holding of said election. The board of trustees of the district shall promptly meet and consider the several certificates of the election commissioners and shall determine the result of said election in the district. If it shall be determined that a majority of the qualified electors of the district have voted against the levy requested, the same shall not be made but the board of supervisors in each county shall continue in effect the levy made for the preceding fiscal year. If it be determined that a majority of the qualified electors has not voted against said levy, it shall be the duty of the board of supervisors of each county to make the levy as requested. In any event, the levy for full faith and credit bonds outstanding as obligations of the county before May 10, 1962, for capital outlays and improvements for Perkinston Junior College and/or bonds subsequently issued shall be continued in effect in accordance with the obligations undertaken in the issuance of said bonds. All of such bond levies, however, as are reasonably required to meet the annual maturities and interest on outstanding bonds shall be considered a part of the three mill maximum above provided for capital outlays, buildings, purchase of land and other similar items hereinbefore mentioned.

**HISTORY: Laws, 1962, ch. 381, § 5; Laws, 1968, ch. 390, § 1.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Levy of taxes in junior college districts generally, see § 37-29-141 et seq.

## OPINIONS OF THE ATTORNEY GENERAL

Taxes levied for the Mississippi Gulf Coast Community College Maintenance and Capital Funds and taxes levied for the Child Development Center are not county funds and, thus, are not eligible to be pledged to fund the debt service resulting from a redevelopment plan. McAdams, March 31, 2000, A.G. Op. #2000-0168.

## COPIAH-LINCOLN JUNIOR COLLEGE DISTRICT

Sec.
37-29-451. Copiah-Lincoln Junior College District created.
37-29-453. President.
37-29-455. Powers of the president.
37-29-457. Selection of trustees; terms.
37-29-459. General powers and duties of trustees.
37-29-461. Campuses.
37-29-463. Preparation of budget.
37-29-465. Purchase of property; capital improvements; lease of facilities.
37-29-467. Transportation of pupils.
37-29-469. Borrowing of money; taxation.
37-29-471. Transfer of property to junior college district.

### § 37-29-451. Copiah-Lincoln Junior College District created.

There is hereby created the Copiah-Lincoln Junior College District comprised of the territory lying within Adams, Copiah, Franklin, Jefferson, Lawrence, Lincoln and Simpson Counties and having boundaries coinciding with the external boundaries thereof. The said district shall be and is hereby constituted a legal political governmental subdivision and a body corporate. The board of trustees of said district, with the consent of the Mississippi Community College Board, is hereby empowered to change the name of the district.

**HISTORY: Laws, 1975, ch. 301, § 1; Laws, 2014, ch. 397, § 69, eff from and after July 1, 2014.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Creation of junior college districts generally, see § 37-29-31.

### § 37-29-453. President.

The Copiah-Lincoln Junior College District shall be under the executive direction of a president elected by the board of trustees of said district for a term not to exceed four (4) years.

**HISTORY: Laws, 1975, ch. 301, § 2, eff from and after passage (approved February 4, 1975).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Office of president of junior colleges generally, see § 37-29-61.

President of the Mississippi Gulf Coast Junior College District, see § 37-29-405.

### § 37-29-455. Powers of the president.

The president of the junior college shall have the power to recommend to the trustees all teachers to be employed; and he may remove or suspend any member of the faculty subject to the approval of the trustees. He shall be the general manager of all fiscal and administrative affairs of the district with full authority to select, direct, employ and discharge any and all employees other than teachers; however, the board may make provisions and establish policies for leave for faculty members and other key personnel.

The president shall have the authority, subject to the provisions of Sections 37-29-451 through 37-29-471 and the approval of the trustees, to arrange and survey courses of study, fix schedules, and establish and enforce rules and discipline for the governing of teachers and students. He shall be the general custodian of the property of the district.

**HISTORY: Laws, 1975, ch. 301, § 3, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Powers of presidents of junior colleges generally, see § 37-29-63.

Powers of the president, Mississippi Gulf Coast Junior College District, see § 37-29-407.

Powers of president, Mississippi Gulf Coast Junior College District, see § 37-29-407.

Powers of president Meridian Junior College District, see § 37-29-509.

Powers of president, Coahoma Community College District, see § 37-29-555.

## § 37-29-457. Selection of trustees; terms.

(1) The operation and control of the Copiah-Lincoln Junior College District shall be vested in a board of trustees representing the seven (7) counties lying within the district. The said board shall consist of twenty (20) members to be chosen as follows:

(a) Copiah County shall be entitled to five (5) members who shall be elected and serve according to Section 37-29-65.

(b) Lincoln County shall be entitled to five (5) members who shall be elected and serve according to Section 37-29-65.

(c) Lawrence County shall be entitled to one (1) member who shall be elected and serve according to Section 37-29-65.

(d) Franklin County shall be entitled to one (1) member who shall be elected and serve according to Section 37-29-65.

(e) Simpson County shall be entitled to one (1) member who shall be elected and serve according to Section 37-29-65.

(f) Jefferson County shall be entitled to one (1) member who shall be elected and serve according to Section 37-29-65.

(g) Adams County shall be entitled to five (5) members who shall be elected from the residents of said county by the board of supervisors of Adams County within thirty (30) days of February 4, 1975.

The terms of office for the members shall be five (5) years. However, upon the first selection of trustees in the county, one (1) shall be elected for a term of five (5) years, one (1) for a term of four (4) years, one (1) for a term of three (3) years, one (1) for a term of two (2) years, and one (1) for a term of one (1) year, so as to prevent the retirement of more than one (1) member in any one (1) year. The members elected from Adams County shall have like qualifications and receive the same compensation as the members from other counties as provided by Section 37-29-65.

(h) There shall be one (1) member of the board of trustees who shall be elected by the members of the said board of trustees from among the residents of the Copiah-Lincoln Junior College District. Said member so chosen shall serve a five-year term and have the same powers and duties as the other board members.

(2) Except as provided in paragraph (g) of this subsection (1), persons who are currently serving as members of the board of trustees of the Copiah-Lincoln Junior College District shall complete their terms without interruption.

**HISTORY: Laws, 1975, ch. 301, § 4, eff from and after passage (approved February 4, 1975); Laws, 2019, ch. 479, § 2, eff from and after July 1, 2019.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Amendment Notes —** The 2019 amendment, in (1), substituted "twenty (20)" for "twenty-seven (27)" in the introductory paragraph, decreased by one the number of members in each county listed in (a) through (f), in (g), substituted "five (5)" for "six (6)" and deleted "and one (1) such member shall be the superintendent of the special municipal separate school district which encompasses Adams County" from the end, and substituted "five-year term" for "five (5) year term" in (h); and substituted "paragraph (g) of this subsection (1)" for "subsection (g) of this section" in (2).

**Cross References —** Selection, number, terms, and compensation of trustees of junior college districts generally, see § 37-29-65.

Selection of trustees, Mississippi Gulf Coast Junior College, see § 37-29-409.

## § 37-29-459. General powers and duties of trustees.

The President and the Board of Trustees of the Copiah-Lincoln Junior College District shall have the powers to do all things necessary for the successful operation of said district and the campuses located therein.

The several colleges of the district shall be under the direction of the board of trustees and the president. The board of trustees shall, by resolution or order, provide for the government, maintenance and operation of each campus of the district.

The President and the Board of Trustees of the Copiah-Lincoln Junior College District shall have the same powers as the presidents and trustees of other junior colleges in the State of Mississippi.

The delineation and enumeration of the powers and purposes set out in Sections 37-29-451 through 37-29-471 shall be deemed to be supplemental and additional and shall not be construed to restrict the powers of the governing authorities of the district or of any college or campus located therein so as to deny any of the rights, privileges and powers enjoyed by other junior colleges and junior college districts in the State of Mississippi.

The said Copiah-Lincoln Junior College District shall remain subject to the jurisdiction and control of the Mississippi Community College Board as now established or as the same may be hereafter changed by law, and shall be subject to all rules and regulations and all statutory limitations which are now in effect or may hereafter be imposed, except as the same may be in direct conflict with the provisions of Sections 37-29-451 through 37-29-471.

**HISTORY: Laws, 1975, ch. 301, § 5; Laws, 1986, ch. 434, § 11; Laws, 2014, ch. 397, § 26, eff from and after July 1, 2014.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Powers and duties of trustees of junior college districts generally, see § 37-29-67.

Powers and duties of trustees of Mississippi Gulf Coast Junior College, see § 37-29-411.

Powers of president, Copiah-Lincoln Junior College District, see § 37-29-455.

Powers and duties of trustees, Meridian Junior College district, see § 37-29-507.

Powers and duties of trustees, Coahoma Community College District, see §§ 37-29-559, 37-29-563.

### OPINIONS OF THE ATTORNEY GENERAL

The board of trustees of the Copiah-Lincoln Community College District has authority to adopt a policy governing the handling of records which are confidential under state or federal law. Henley, July 18, 2005, A.G. Op. 05-0351.

## § 37-29-461. Campuses.

There shall be two (2) campuses in the Copiah-Lincoln Junior College District: one (1) located in or near Natchez to be known as the Natchez Campus, and the other in or near Wesson to be known as the Copiah-Lincoln Campus.

**HISTORY: Laws, 1975, ch. 301, § 6, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Junior college attendance centers generally, see § 37-29-69.

## § 37-29-463. Preparation of budget.

The board of trustees of the Copiah-Lincoln Junior College District shall each year, on or before June 15, prepare a budget which shall contain a detailed estimate of the revenues and expenses anticipated for the ensuing year for general operation and maintenance, and shall set forth the reasonable requirements for anticipated needs for capital outlays for land, buildings, initial equipment for new buildings and major repairs, a reasonable accumulation for such purposes being hereby expressly authorized.

**HISTORY: Laws, 1975, ch. 301, § 7, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Preparation of budgets of junior college districts generally, see § 37-29-71.

Preparation of budget, Mississippi Gulf Coast Junior College District, see § 37-29-415.

Preparation of budget, Meridian Junior College District, see § 37-29-511.

## § 37-29-465. Purchase of property; capital improvements; lease of facilities.

The board of trustees of the Copiah-Lincoln Junior College District shall have the authority to purchase property, make capital improvements, and lease or use private or public facilities at either the Copiah-Lincoln or Natchez Campuses, in the discretion of the board.

**HISTORY: Laws, 1975, ch. 301, § 8, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

## § 37-29-467. Transportation of pupils.

The Copiah-Lincoln Junior College District is charged with the responsibility for providing preprofessional courses, liberal arts, technical, vocational and adult education courses, and shall undertake to provide the same as conveniently as is possible to the residents of the district, and to this end the board of trustees is authorized and empowered to transport such students as, in its discretion, should be transported in the best interest of the district.

**HISTORY: Laws, 1975, ch. 301, § 9, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Transportation of pupils of junior college districts generally,

see § 37-29-79.

Transportation of pupils, Mississippi Gulf Coast Junior College District, see § 37-29-421.

Transportation of pupils, Coahoma Community College District, see § 37-29-565.

## § 37-29-469. Borrowing of money; taxation.

The board of trustees of the Copiah-Lincoln Junior College District shall have the general borrowing and bonding authority provided in Sections 37-29-101 through 37-29-127. The said board of trustees shall have the taxation authority provided in Sections 37-29-141 through 37-29-145.

**HISTORY: Laws, 1975, ch. 301, § 10, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Borrowing of money in junior college districts generally, see § 37-29-101 et seq.

Levy of taxes in junior college districts generally, see § 37-29-141 et seq.

## § 37-29-471. Transfer of property to junior college district.

All of the property belonging to the board of trustees of Copiah-Lincoln Junior College and all of the property belonging to any or all of the counties, prior to and as of the effective date hereof, cooperating in the Copiah-Lincoln Junior College or the agricultural high school-junior college located at Wesson, Mississippi or the campus in Adams County, Mississippi, and utilized or held for the present or future use and benefit of said junior college and/or agricultural high school-junior college, shall be and the same is hereby transferred to and vested in the Copiah-Lincoln Junior College District as created by Sections 37-29-451 through 37-29-471.

**HISTORY: Laws, 1975, ch. 301, § 11, eff from and after passage (approved February 4, 1975).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Transfer of property of existing institutions boards of trustees of junior colleges generally, see § 37-29-33.

Transfer of property to Meridian Junior College District, see § 37-29-503.

Transfer of property to Coahana Community College District, see § 37-29-569.

## MERIDIAN JUNIOR COLLEGE DISTRICT

Sec.
37-29-501. Meridian Junior College District created.
37-29-503. Transfer of property to district.

Sec.
37-29-505. Board of trustees; terms of office; vacancies.
37-29-507. General powers and duties of trustees.
37-29-509. President; powers and duties.
37-29-511. Preparation of budget.
37-29-513. Tax levy for maintenance of Meridian Junior College District.
37-29-515. Receipt and expenditure of tax revenues.

## § 37-29-501. Meridian Junior College District created.

There is hereby created a junior college district comprised of the territory lying within the Meridian Municipal Separate School District and having boundaries coinciding with the external boundaries thereof. The name of the said junior college district shall be the Meridian Junior College District and the said district shall be and the same is hereby constituted a legal political governmental subdivision and a body corporate.

**HISTORY: Laws, 1980, ch. 428, § 1, eff from and after passage (approved April 30, 1980).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Creation of junior college districts, generally, see § 37-29-31.

## § 37-29-503. Transfer of property to district.

All of the property owned by the Meridian Municipal Separate School District utilized by Meridian Junior College as of September 1, 1979, shall be and the same is hereby transferred to and vested in the board of trustees of the Meridian Junior College District and their successors in office.

**HISTORY: Laws, 1980, ch. 428, § 2, eff from and after passage (approved April 30, 1980).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Transfer of property of existing institutions to boards of trustees of junior colleges generally, see § 37-29-33.

Transfer of property to Mississippi Gulf Coast Junior College District, see § 37-29-403.

Transfer of property to Copiah-Lincoln Junior College District, see § 37-29-471.

Transfer of property, Coahoma Community College District, see § 37-29-569.

## § 37-29-505. Board of trustees; terms of office; vacancies.

The control and operation of the Meridian Junior College District shall be vested in a board of trustees appointed by the city council of the City of Meridian. The board of trustees of the Meridian Junior College District shall consist of five (5) members. When the initial appointments are made, the first appointee shall serve for a term of one (1) year, the second appointee for a term of two (2) years, the third appointee for a term of three (3) years, the fourth appointee for a term of four (4) years and the fifth appointee for a term of five (5) years; thereafter all appointments shall be for a term of five (5) years. Trustees of the Meridian Junior College District shall be appointed by a majority vote of the full membership of the city council of the City of Meridian at the first meeting of the council held in the month of February of each year, and the term of office of each trustee so appointed shall commence on the first Saturday of March following, except that the existing trustees of the Meridian Municipal Separate School District as of April 30, 1980, shall constitute the initial board of trustees of the Meridian Junior College District. As the terms of these individual trustees expire, trustees for the Meridian Junior College District shall be appointed as provided herein. All vacancies shall be filled for unexpired terms by appointment by majority vote of the full membership of the city council.

**HISTORY: Laws, 1980, ch. 428, § 3, eff from and after passage (approved April 30, 1980).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Selection and compensation of trustees of junior college districts, generally, see § 37-29-63.

Number of trustees for junior colleges in general, see § 37-29-65.

## § 37-29-507. General powers and duties of trustees.

(1) The Board of Trustees of the Meridian Junior College District shall have the power to do all things necessary for the successful operation of the district; and, the duties of such board shall be the general government of the district and the direction of the administration thereof.

(2) The Meridian Junior College District shall have all the powers of other junior colleges and junior college districts in the State of Mississippi; and, the delineation and enumeration of the powers and purposes set out in Sections 37-29-501 through 37-29-515 shall not be construed to restrict the powers of the governing authorities of the district so as to deny to the district any of the rights, privileges and powers enjoyed by other junior colleges and junior college districts in the State of Mississippi.

(3) The Meridian Junior College District shall remain subject to the jurisdiction and control of the Mississippi Community College Board as now established or as the same may be hereafter changed by law and shall be subject to all rules and regulations and all statutory limitations which are now in effect or may hereafter be imposed, except as the same may be in direct conflict with the provisions of Sections 37-29-501 through 37-29-515.

**HISTORY: Laws, 1980, ch. 428, § 4; Laws, 1986, ch. 434, § 12; Laws, 2014, ch. 397, § 27, eff from and after July 1, 2014.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Mississippi Community College Board generally, see § 37-4-1 et seq.

Powers and duties of trustees of junior college districts, generally, see § 37-29-67.

Powers and duties of trustees of Mississippi Gulf Coast Junior College District, see § 37-29-411.

Powers and duties of trustees of Copiah-Lincoln Junior College District, see § 37-29-459.

Powers and duties of trustees of Coahoma Community college District, see §§ 37-29-559, 37-29-563.

## § 37-29-509. President; powers and duties.

(1) The Meridian Junior College District shall be under the executive direction of a president elected by the board of trustees of such district.

(2) The president of the community college shall be general manager of all fiscal and administrative affairs of the district with full authority to select, employ, direct and discharge any and all employees other than faculty. He shall have the power to recommend to the board of trustees all faculty to be employed, and he may remove or suspend any member of the faculty subject to the approval of the board of trustees. The president shall have the authority, subject to the approval of the board of trustees, to arrange and survey courses of study, fix schedules and establish and enforce rules and discipline for the governing of faculty and students. He shall be the general custodian of the property of the district.

**HISTORY: Laws, 1980, ch. 428, § 5, eff from and after passage (approved April 30, 1980).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Presidents of junior colleges, generally, see § 37-29-61.

Powers of president, Mississippi Gulf Coast Junior College District, see § 37-29-407.

Powers of president, Copiah-Lincoln Junior College District, see § 37-29-455.

Powers an duties of president, Coahoma Community College District, see § 37-29-555.

## § 37-29-511. Preparation of budget.

The board of trustees of the Meridian Junior College District shall on or before the twenty-fifth day of June each year prepare and file the annual budget of the district. The budget shall contain a detailed estimate of the revenues and expenses anticipated for the ensuing year for general operation and maintenance and shall set forth reasonable requirements for anticipated needs for capital outlays for land, buildings, equipment and major repairs, a reasonable accumulation for such purposes being hereby expressly authorized.

Funds derived from the levy for capital outlay shall be kept in a separate account and expended for capital outlay purposes only.

**HISTORY: Laws, 1980, ch 428, § 6, eff from and after passage (approved April 30, 1980).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Preparation of budgets for junior college districts, generally, see § 37-29-71.

Preparation of budget, Mississippi Gulf Coast Junior College District, see § 37-29-415.

Preparation of budget, Copiah-Lincoln Junior College District, see § 37-29-463.

Preparation of budget, Coahoma Community College District, see § 37-29-561.

## § 37-29-513. Tax levy for maintenance of Meridian Junior College District.

After the annual budget has been prepared, the board of trustees of the Meridian Junior College District shall certify the same in writing to the city council of the City of Meridian and shall certify to the number of mills of ad valorem taxation required to make provisions for the revenue required in said budget. It shall thereupon become the duty of the City of Meridian to levy taxes upon the Meridian Junior College District in the amount specified by the board of trustees. The tax levy for maintenance and operation of the Meridian Junior College District shall not exceed three (3) mills nor shall the levy for construction exceed an additional three (3) mills.

**HISTORY: Laws, 1980, ch. 428, § 7, eff from and after passage (approved April 30, 1980).**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Homestead exemption from certain taxes levied to support junior college districts, see § 27-33-3.

Levy of taxes in junior college districts, generally, see § 37-29-141 et seq.

## § 37-29-515. Receipt and expenditure of tax revenues.

On or before the thirtieth day of each month, the city council of the City of Meridian shall transmit warrants constituting all of the revenues received from taxation for the prior month for purposes of support of the Meridian Junior College District to the president of the Meridian Junior College. Such warrant or warrants shall bear indication of revenues received for general support and maintenance and revenues received for capital outlay purposes. All such warrants evidencing income from the authorized tax levies shall be deposited forthwith in one (1) or more banking institutions and public depositories previously selected by the board of trustees of the Meridian Junior College District and spread upon its official minutes. Such funds shall be paid out of the depository by order of the board of trustees for lawful purposes only.

**HISTORY: Laws, 1980, ch. 428, § 8, eff from and after passage (approved April 30, 1980).**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Receipt and expenditure of tax revenues by junior college districts, generally, see § 37-29-143.

## COAHOMA COMMUNITY COLLEGE DISTRICT

Sec.
37-29-551. Coahoma Community College District; creation; boundaries.
37-29-553. President; election by trustees of district; term not to exceed four years.
37-29-555. President's powers and authority.
37-29-557. Operation and control of district vested in board of trustees; area represented; number and selection.
37-29-559. President and Board of Trustees, powers; authority of Mississippi Community College Board.
37-29-561. Annual budget.
37-29-563. Board of Trustees, authority to purchase property, lease or use private or public facilities, make capital improvements.
37-29-565. District responsible for providing pre-professional, liberal arts, technical, vocational and adult education courses and to transport students.
37-29-567. General borrowing and bonding authority; taxing authority.
37-29-569. Property transferred to District.
37-29-571. Counties, support and maintenance of community colleges, allocation of millage.

### § 37-29-551. Coahoma Community College District; creation; boundaries.

There is hereby created the Coahoma Community College District comprised of the territory lying within Coahoma County, Tunica County, Quitman County, Bolivar County and Tallahatchie County, and having boundaries coinciding with the external boundaries thereof. The district shall be, and is hereby constituted, a legal political governmental subdivision and a body corporate.

**HISTORY: Laws, 1995, ch. 605, § 1, eff from and after July 1, 1995.**

**Editor's Notes —** Laws of 2018, ch. 307, § 1, effective March 5, 2018, provides in part:

"(1) The Department of Finance and Administration, acting on behalf of the Board of Trustees of State Institutions of Higher Learning and Delta State University, is authorized to donate, transfer and convey for no consideration to the Board of Trustees of Coahoma Community College, for the use and benefit of the Coahoma County Higher

Education Center, certain real property known as the "Cutrer Mansion lot," "St. Elizabeth School lot," and "St. Elizabeth Gymnasium lot." The real property is located in Coahoma County, Mississippi and is more particularly described as follows:

[For a complete description of the property, see Section 1 of Chapter 307, Laws of 2018.]

"(2) The Board of Trustees of Coahoma Community College shall be responsible for the management and upkeep of the property described in subsection (1), as well as any facilities thereon and any improvements that may be constructed on the site.

"(3) The Department of Finance and Administration, acting on behalf of the Board of Trustees of State Institutions of Higher Learning, is authorized to convey the property described in subsection (1) subject to the following conditions:

"(a) That the property shall be used for the purposes of providing higher education, workforce training, and/or other continuing education opportunities to the public. The Board of Trustees of Coahoma Community College shall ensure that the Coahoma County Higher Education Center carries out these purposes;

"(b) That the property shall revert to the Department of Finance and Administration in the event that the Board of Trustees of Coahoma Community College should operate the Coahoma County Higher Education Center contrary to the purposes set forth in paragraph (a) of this subsection; and

"(c) That the property shall revert to the Department of Finance and Administration in the event that the Board of Trustees of Coahoma Community College abandons or attempts to sell or transfer all or a portion of such property to another entity.

"(4) The Department of Finance and Administration shall have the authority to correct any discrepancies in the property descriptions provided in subsection one (1) of this section.

"(5) The State of Mississippi shall retain all mineral rights to the real property conveyed and transferred under this section."

Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

### RESEARCH REFERENCES

**Am. Jur.**

15A Am. Jur. 2d, Colleges and Universities §§ 35 et seq.

## § 37-29-553. President; election by trustees of district; term not to exceed four years.

The Coahoma Community College District shall be under the executive direction of a president elected by the board of trustees of the district for a term not to exceed four (4) years.

**HISTORY: Laws, 1995, ch. 605, § 2, eff from and after July 1, 1995.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities § 9.

**CJS.**
14A C.J.S., Colleges and Universities §§ 25–27.

## § 37-29-555. President's powers and authority.

The president of the community college shall have the power to recommend to the trustees all teachers to be employed; and he may remove or suspend any member of the faculty subject to the approval of the trustees. He shall be the general manager of all fiscal and administrative affairs of the district with full authority to select, direct, employ and discharge any and all employees other than teachers; however, the board may make provisions and establish policies for leave for faculty members and other key personnel.

The president shall have the authority, subject to the provisions of Sections 37-29-551 through 37-29-569 and the approval of the trustees, to arrange and survey courses of study, fix schedules, and establish and enforce rules and discipline for the governing of teachers and students. He shall be the general custodian of the property of the district.

**HISTORY: Laws, 1995, ch. 605, § 3, eff from and after July 1, 1995.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References** — Powers of presidents of junior colleges generally, see § 37-29-63.

Powers of the president Mississippi Gulf Coast Junior College District, see § 37-29-407.

Powers of the president, Copiah-Lincoln Junior College District, see § 37-29-455.

Powers of the president, Meridian Junior College District, see § 37-29-555.

RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities § 4.

**CJS.**
14A C.J.S., Colleges and Universities §§ 3, 10–12.

## § 37-29-557. Operation and control of district vested in board of trustees; area represented; number and selection.

The operation and control of the Coahoma Community College District shall be vested in a board of trustees representing the counties lying within the district. The board shall consist of fourteen (14) trustees selected in the manner provided in Section 37-29-65(4), Mississippi Code of 1972.

**HISTORY: Laws, 1995, ch. 605, § 4 eff from and after July 1, 1995.**

**Editor's Notes** — Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**RESEARCH REFERENCES**

**Am. Jur.**

15A Am. Jur. 2d, Colleges and Universities § 9.

**CJS.**

14A C.J.S., Colleges and Universities §§ 6, 7.

## § 37-29-559. President and Board of Trustees, powers; authority of Mississippi Community College Board.

The President and the Board of Trustees of the Coahoma Community College District shall have the powers to do all things necessary for the successful operation of the district and the campuses located therein.

The college of the district shall be under the direction of the board of trustees and the president. The board of trustees shall, by resolution or order, provide for the government, maintenance and operation of the campus of the district.

The President and the Board of Trustees of the Coahoma Community College District shall have the same powers as the presidents and trustees of other community colleges in the State of Mississippi.

The delineation and enumeration of the powers and purposes set out in Sections 37-29-551 through 37-29-569 shall be deemed to be supplemental and additional and shall not be construed to restrict the powers of the governing authorities of the district or of any college or campus located therein so as to deny any of the rights, privileges and powers enjoyed by other community/junior colleges and community/junior college districts in the State of Mississippi.

The Coahoma Community College District shall remain subject to the jurisdiction of the Mississippi Community College Board as now established or as the same may be hereafter changed by law, and shall be subject to all rules and regulations and all statutory limitations which are now in effect or may hereafter be imposed, except as the same may be in direct conflict with the provisions of Sections 37-29-551 through 37-29-569.

**HISTORY: Laws, 1995, ch. 605, § 5; Laws, 2014, ch. 397, § 28, eff from and after July 1, 2014.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Powers and duties of trustees of junior colleges generally, see § 37-29-67.

Powers and duties of trustees of Mississippi Gulf Coast Junior College District, see § 37-29-411.

Powers and duties of trustees of Copiah-Lincoln Junior College District, see

§ 37-29-459.
Powers and duties of trustees of Meridian Junior College District, see § 37-29-507.

### RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities §§ 4 et seq.

**CJS.**
14A C.J.S., Colleges and Universities §§ 10–12.

## § 37-29-561. Annual budget.

The Board of Trustees of the Coahoma Community College District shall each year, on or before June 15, prepare a budget which shall contain a detailed estimate of the revenues and expenses anticipated for the ensuing year for general operation and maintenance, and shall set forth the reasonable requirements for anticipated needs for capital outlays for land, buildings, initial equipment for new buildings and major repairs, a reasonable accumulation for such purposes being hereby expressly authorized.

**HISTORY: Laws, 1995, ch. 605, § 6, eff from and after July 1, 1995.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Preparation of budgets of junior college districts generally, see § 37-29-71.
Preparation of budget, Mississippi Gulf Coast Junior College District, see § 37-29-415.
Preparation of budget, Copiah-Lincoln Junior College District, see § 37-29-463.
Preparation of budget, Meridian Junior College District, see § 37-29-561.

### RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities §§ 35 et seq.

**CJS.**
14A C.J.S., Colleges and Universities §§ 6, 7.

## § 37-29-563. Board of Trustees, authority to purchase property, lease or use private or public facilities, make capital improvements.

The Board of Trustees of the Coahoma Community College District shall have the authority to purchase property, make capital improvements, and lease or use private or public facilities at the campus, in the discretion of the board.

**HISTORY: Laws, 1995, ch. 605, § 7, eff from and after July 1, 1995.**

RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities §§ 35 et seq.

**CJS.**
14A C.J.S., Colleges and Universities §§ 6, 7.

## § 37-29-565. District responsible for providing pre-professional, liberal arts, technical, vocational and adult education courses and to transport students.

The Coahoma Community College District is charged with the responsibility for providing preprofessional courses, liberal arts, technical, vocational and adult education courses, and shall undertake to provide the same as conveniently as is possible to the residents of the district, and to this end the board of trustees is authorized and empowered to transport such students as, in its discretion, should be transported in the best interest of the district.

**HISTORY: Laws, 1995, ch. 605, § 8, eff from and after July 1, 1995.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

RESEARCH REFERENCES

**CJS.**
14A C.J.S., Colleges and Universities §§ 7–13.

## § 37-29-567. General borrowing and bonding authority; taxing authority.

The Board of Trustees of the Coahoma Community College District shall have the general borrowing and bonding authority provided in Sections 37-29-101 through 37-29-127. The board of trustees shall have the taxation authority provided in Sections 37-29-141 through 37-29-145.

**HISTORY: Laws, 1995, ch. 605, § 9, eff from and after July 1, 1995.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities §§ 35 et seq.

**CJS.**
14A C.J.S., Colleges and Universities §§ 10-12, 68.

## § 37-29-569. Property transferred to District.

All of the property located in Coahoma County and belonging to the Board of Trustees of Mississippi Delta Community College prior to and as of the effective date hereof, cooperating in the Coahoma County Community College, and utilized or held for the present or future use and benefit of such community college, shall be and the same is hereby transferred to and vested in the Coahoma County Community College District as created by Sections 37-29-551 through 37-29-569.

**HISTORY: Laws, 1995, ch. 605, § 10, eff from and after July 1, 1995.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

**Cross References —** Transfer of property of existing institutions to boards of trustees of junior colleges generally, see § 37-29-33.

Transfer of property, Mississippi Gulf Coast Junior College District, see § 37-29-403.

Transfer of property, Copiah-Lincoln Junior College District, see § 37-29-471.

Transfer of property, Meridian Junior College District, § 37-29-503.

### RESEARCH REFERENCES

**Am. Jur.**

15A Am. Jur. 2d, Colleges and Universities §§ 35 et seq.

**CJS.**

14A C.J.S., Colleges and Universities §§ 6, 7.

## § 37-29-571. Counties, support and maintenance of community colleges, allocation of millage.

All counties located within the Coahoma Community College District shall allocate fifty percent (50%) of any millage levied for the support and maintenance of community colleges by such county under Section 37-29-141, Mississippi Code of 1972, to the Coahoma Community College District and the remaining fifty percent (50%) of such millage to the other community college district in which such county is located. Provided, however, that Coahoma County shall allocate one hundred percent (100%) of the millage levied for the support and maintenance of community colleges to the Coahoma Community College District. Provided further, however, for the fiscal year beginning July 1, 1995, Tunica County's allocation of any millage shall be prorated with thirty-five percent (35%) being allocated to the Coahoma Community College District and the remaining sixty-five percent (65%) being allocated to the Northwest Community College District. From and after July 1, 1996, the Tunica County millage shall be divided equally between the Coahoma Community College District and the Northwest Community College District.

**HISTORY: Laws, 1995, ch. 605, § 11, eff from and after July 1, 1995.**

**Editor's Notes —** Section 1, ch. 498, Laws of 1987, which amended § 37-29-67 to authorize junior colleges to change their name to community colleges, provides that any

reference to junior college district in Chapter 29 shall refer to the junior college district or its successor in name as changed by the board of trustees.

### RESEARCH REFERENCES

**Am. Jur.**
15A Am. Jur. 2d, Colleges and Universities §§ 35 et seq.

**CJS.**
14A C.J.S., Colleges and Universities §§ 6, 10, 11.

## EDUCATIONAL BUILDING CORPORATIONS

Sec.
37-29-601. Authorization and procedure for organization of nonprofit educational building corporations.
37-29-603. General powers of corporations.
37-29-605. Issuance of bonds.
37-29-607. Liability on bonds.
37-29-609. Bonds as legal investments.
37-29-611. Declaration of necessity of formation of educational building corporation; vesting of title to facilities upon retirement of bonds.
37-29-613. Powers of educational building corporations as to payment of bonds.

### § 37-29-601. Authorization and procedure for organization of nonprofit educational building corporations.

Whenever the Mississippi Community College Board shall, by a proper resolution, declare the necessity of the formation of nonprofit corporations for the purpose of acquiring or constructing facilities for community and junior colleges under its jurisdiction, any number of natural persons, not less than three (3), who are residents of the State of Mississippi may file with the Secretary of State an application in writing for authority to incorporate a public nonprofit corporation, known as an "educational building corporation." If it shall be made to appear that each of the persons is a duly qualified resident of this state, then the persons filing such application shall be authorized, subject to the prior approval by the board of the form of the articles of incorporation and bylaws thereof, to proceed to form the corporation as provided by the general law of this state with respect to corporations organized not-for-profit except as provided in Sections 37-29-601 through 37-29-613. The Secretary of State, upon receipt of the application, shall forthwith issue a certificate of incorporation.

**HISTORY: Laws, 2010, ch. 511, § 18; Laws, 2014, ch. 397, § 29, eff from and after July 1, 2014.**

**Cross References —** Board of trustees of state institutions of higher learning authorized to organize nonprofit educational building corporations, see § 37-101-61.

### § 37-29-603. General powers of corporations.

Each corporation formed under the provisions of Section 37-29-601 shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

(a) To have succession by its corporate name for the duration of time, which may be in perpetuity, specified in its certificate of incorporation;

(b) To sue and be sued and to defend suits against it;

(c) To make use of a corporate seal and to alter it at pleasure;

(d) To acquire, whether by purchase, construction or gift, facilities for one or more community or junior college and land therefor;

(e) To equip, maintain, enlarge or improve such facilities;

(f) To lease under such terms and conditions as its board of directors may deem advisable and as shall not conflict with the provisions of Sections 37-29-601 through 37-29-613 to the Mississippi Community College Board or to such other entity as may be approved by the board subject to prior approval by the board of each issue of bonds;

(g) To issue its bonds for the purpose of defraying the cost of acquiring, constructing, maintaining, enlarging, improving or equipping any of such facilities or land in the manner provided in Section 37-29-601;

(h) To secure the payment of such bonds through the pledge of and lien on such revenues or other sources of income, including lease payments, entering into trust agreements, and the making of such covenants as are provided in Section 37-101-101;

(i) To refund bonds previously issued;

(j) To enter into contracts and agreements or do any act necessary for or incidental to the performance of its duties and the execution of its powers under Sections 37-29-601 through 37-29-613;

(k) To accept gifts from any source whatsoever;

(*l*) To appoint and employ such officers and agents, including attorneys, as its business may require; and

(m) To provide for such insurance as its board of directors may deem advisable.

**HISTORY: Laws, 2010, ch. 511, § 19; Laws, 2014, ch. 397, § 30, eff from and after July 1, 2014.**

**Cross References —** General powers of educational building corporations formed under the provisions of § 37-101-61, see § 37-101-63.

## § 37-29-605. Issuance of bonds.

All bonds issued by an educational building corporation may be executed and delivered at any time and from time to time, may be in such form and denominations, may be of such tenor, may be payable in such installments and at such time or times not exceeding thirty (30) years from their date, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner, and may contain such provisions not inconsistent with Sections 37-29-601 through 37-29-613, all as may be provided by resolution of its board of directors. The bonds issued by any such corporation shall be signed by the chairman of its board of directors or other chief executive officer and attested by its secretary, and the seal of such corporation shall be affixed thereto. Any such bonds may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors to be most advantageous, and the corporation may pay all expenses, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds. All such bonds shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

**HISTORY: Laws, 2010, ch. 511, § 20, eff from and after passage (approved Apr. 13, 2010).**

**Cross References —** Issuance of bonds by educational building corporations formed under the provisions of § 37-101-61, see § 37-101-65.

## § 37-29-607. Liability on bonds.

(1) All bonds issued by an educational building corporation shall be solely and exclusively obligations of the corporation and shall not create an obligation or debt of the State of Mississippi. The state shall not pledge its full faith or credit for the payment of any debt incurred or bonds issued by such corporation.

(2) All such bonds shall not constitute a debt of the community or junior college for which the facilities are to be constructed.

**HISTORY: Laws, 2010, ch. 511, § 21, eff from and after passage (approved Apr. 13, 2010).**

**Cross References —** Liability on bonds issued by educational building corporations formed under the provisions of § 37-101-61, see § 37-101-67.

## § 37-29-609. Bonds as legal investments.

All bonds issued by an educational building corporation shall be lawful investments for trusts, insurance companies, savings companies, banks and other financial institutions organized under the laws of this state.

**HISTORY: Laws, 2010, ch. 511, § 22, eff from and after passage (approved Apr. 13, 2010).**

**Cross References —** Bonds issued by educational building corporations formed under the provisions of § 37-101-61 as legal investments, see § 37-101-69.

## § 37-29-611. Declaration of necessity of formation of educational building corporation; vesting of title to facilities upon retirement of bonds.

(1) The Mississippi Community College Board is hereby authorized and empowered, in its discretion, to pass proper resolutions declaring the necessity

of the formation of nonprofit educational building corporations, as set forth in Section 37-29-601.

(2) When the principal of and the interest on any bonds of an educational building corporation payable from the revenues derived from the operation of facilities owned by the corporation shall have been paid in full, then such facilities shall become the property of the community or junior college on whose campus they are located and title to the facilities shall thereupon immediately vest in the community or junior college on whose campus they are located.

**HISTORY: Laws, 2010, ch. 511, § 23; Laws, 2014, ch. 397, § 31, eff from and after July 1, 2014.**

**Cross References —** Vesting of title to facilities upon retirement of bonds issued by educational building corporations formed under the provisions of § 37-101-61, see § 37-101-71.

## § 37-29-613. Powers of educational building corporations as to payment of bonds.

The educational building corporations authorized under Sections 37-29-601 through 37-29-613, in connection with the issuance of the bonds in order to secure the payment of such bonds and interest thereon, shall have power by resolutions:

(a) To fix and maintain fees, rentals and other charges to be paid by students, faculty members and others using or being served by facilities for which bonds are issued under Sections 37-29-601 through 37-29-613; however, in fixing such fees, rentals and other charges, there may be allowed reasonable differentials based on the condition, type, location and relative convenience of the facilities in question, but the differentials shall be uniform as to all such students or faculty members and others similarly accommodated;

(b) To provide that bonds issued shall be secured by a first, exclusive and closed lien on, and shall be payable from, all or any part of the income and revenues derived from fees, rentals and other charges to be paid by students, faculty members or others using or being served by any facilities operated at the community or junior college, and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under Sections 37-29-601 through 37-29-613, or any other law, or otherwise, and not theretofore so pledged;

(c) To pledge and assign to, or in trust for the benefit of the holder or holders of any bond or bonds, coupon or coupons so issued, an amount of the income and revenues derived from fees, rentals and other charges to be paid by students, faculty members, or others using or being served by any facilities operated at any community or junior college, and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under Sections 37-29-601 through 37-29-613, or any other law, or otherwise, and not theretofore so pledged, and the rentals, fees and charges imposed and pledged pursuant to the terms of this section shall be sufficient to pay when due the bonds so issued and interest thereon, to create and maintain a reasonable reserve therefor, and to operate and maintain the project so constructed, and to create and at all times maintain an adequate reserve for contingencies and for major repairs and replacements;

(d) To covenant with or for the benefit of the holder or holders of any bond or bonds, coupon or coupons so issued to erect, repair, remodel, maintain, add to, extend, improve or acquire any facilities, that so long as any of the bonds shall remain outstanding and unpaid, the institution shall fix, maintain and collect, in installments as may be agreed upon, an amount of fees, rentals or other charges from students, faculty members and others using or being served by any facilities operated at any community or junior college and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under Sections 37-29-601 through 37-29-613, or any other law, or otherwise, which shall be sufficient to pay when due any bond or bonds, coupons or coupons so issued, and to create and maintain a reasonable reserve therefor, and to pay the cost of operation and maintenance of the facilities against loss or damage by fire and windstorm or other calamities, in such sum as may be acceptable to the purchaser or purchasers of the bonds. The rentals, fees and other charges shall at all times be sufficient to maintain an adequate bond sinking fund to provide for the payment of interest on and principal of the bonds as and when they accrue and mature, to create a reasonable reserve therein and to pay the cost of operation and maintenance and insurance as herein provided and to create and at all times maintain an adequate reserve for contingencies and for major repairs and replacements;

(e) To make and enforce and agree to make and enforce parietal rules that shall insure the use of the facility by all students in attendance at the community or junior college, and faculty members of the community or junior college, to the maximum extent the facilities are capable of serving students and faculty, so long as it does not interfere with any existing contract;

(f) To covenant that as long as any of the bonds so issued shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined by the resolution issuing such bonds:

(i) Voluntarily create, or cause to be created, any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds so issued upon any of the income and revenues derived from fees, rentals and other charges to be paid by students, faculty members and others using or being served by the facilities operated at any such institution and erected, repaired, remodeled, maintained, added to, extended, improved or acquired under Sections 37-29-601 through 37-29-613, or any other law, or otherwise;

(ii) Convey or otherwise alienate the facilities, or the real estate upon which the same shall be located, except at a price sufficient to pay all the bonds then outstanding payable from the revenues derived therefrom and interest accrued on such bonds, and then only in accordance with any agreements with the holder or holders of such bonds; or

(iii) Mortgage or otherwise voluntarily create, or cause to be created, any encumbrance on the facility, or the real estate upon which it shall be located;

(g) To covenant as to the proceedings by which the terms of any contract with a holder or holders of such bonds may be amended or rescinded, the amount or percentage of bonds the holder or holders of which must consent thereto and the manner in which consent may be given;

(h) To vest in a trustee or trustees the right to receive all or any part of the income and revenue and proceeds of insurance pledged and assigned to, or for the benefit of, the holder or holders of such bonds, and to hold, apply and dispose of the income and revenue and proceeds of insurance and the right to enforce any covenant made to secure or pay or in relation to the bonds;

(i) To execute and deliver, in the name of the community or junior college for which such bonds are being issued, a trust agreement or agreements which may set forth the powers and duties of such trustee or trustees, and limiting the liabilities of the trustee or trustees, and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such right and enforce any and all such covenants and resort to any remedies as may be appropriate; and

(j) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted powers and duties as are usually granted under the laws of the State of Mississippi to a receiver or receivers appointed in connection with the foreclosure of a mortgage made by a private corporation.

**HISTORY: Laws, 2010, ch. 511, § 24, eff from and after passage (approved Apr. 13, 2010).**

# CHAPTER 31.

# VOCATIONAL EDUCATION

Securing Benefits of Federal Vocational Education Act. .................... 37-31-1
Securing Benefits of Federal Social Security Act. ........................... 37-31-31
Vocational and Technical Schools, Classes or Courses. ...................... 37-31-61
Regional Education Centers. ................................................... 37-31-71
Future Farmers of America Camps. ............................................ 37-31-81
Manpower Development and Training for Specific Employment Opportunities. ................................................ 37-31-101
Funds for Mississippi Board of Vocational and Technical Education. ..... 37-31-201

## SECURING BENEFITS OF FEDERAL VOCATIONAL EDUCATION ACT

Sec.
37-31-1. Federal vocational education act accepted.
37-31-3 and 37-31-5. Repealed.
37-31-7. Authority of State Board of Education.
37-31-9. Duties of state treasurer.
37-31-11. State appropriations for vocational education.
37-31-13. How state appropriations shall be used.
37-31-15. School boards authorized to establish and maintain vocational and technical schools and classes.

### § 37-31-1. Federal vocational education act accepted.

The State of Mississippi hereby accepts all the provisions and benefits of an act passed by the senate and house of representatives of the United States of America, in congress assembled, entitled: "An act to provide for the promotion of vocational education; to provide for co-operation with the state in the promotion of such education in agriculture, trades and industries, home economics and distributive education; to provide for co-operation with the states in the preparation of teachers of vocational subjects, and to appropriate money and regulate its expenditure," approved February 23, nineteen hundred seventeen, and known as the "Smith-Hughes Act."

**HISTORY: Codes, 1930, § 6701; 1942, § 6487; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1940, ch. 176.**

**Cross References —** State board of education generally, see § 37-1-1 et seq.
Career education program in public schools, see § 37-13-58 et seq.
Correctional industries work program, see § 47-5-501 et seq.
**Federal Aspects—** Smith-Hughes Act, see 20 USCS §§ 11 et seq.

#### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).

## §§ 37-31-3 and 37-31-5. Repealed.

Repealed by Laws, 1982, ch. 493, § 19, eff from and after July 1, 1983.

§ 37-31-3. [Codes, 1930, § 6703; 1942, § 6489; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1936, ch. 214; Laws, 1946, ch. 314, §§ 1, 2]

§ 31-37-5. [Codes, 1930, § 6704; 1942, § 6490; Laws, 1924, ch. 283; Laws, 1930, ch. 278]

**Editor's Notes** — Former § 37-31-3 provided that the state board of education would constitute the state board for vocational education.

Former § 37-31-5 provided that the state superintendent of public education would be the chief executive officer of the state board.

## § 37-31-7. Authority of State Board of Education.

The State Board of Education shall have all necessary authority to cooperate with the federal board for vocational education in the administration of the "Smith-Hughes Act" and all subsequent federal vocational education and training acts, to administer any legislation pursuant thereto enacted by the State of Mississippi, and to administer the funds provided by the federal government and the State of Mississippi under the provisions of Sections 37-31-1 through 37-31-15 for the promotion of vocational and technical education not terminating in a bachelors degree. It shall have full authority to formulate plans for the promotion of vocational and technical education in such subjects as are an essential and integral part of the public school system of education in the State of Mississippi, to provide for the preparation of teachers of such subjects, and to escrow funds for students participating in recognized articulated business/industry specific worksite learning programs. It shall have authority to fix the compensation of such officials and assistants as may be necessary to administer the "Smith-Hughes Act" and Sections 37-31-1 through 37-31-15 for the State of Mississippi and to pay such compensation and other necessary expenses of administration from funds appropriated under provisions of said sections. It shall have authority to make studies and investigations relating to vocational and technical education in such subjects; to publish the results of such investigations and to issue other publications as seem necessary by the board; to promote and aid in the establishment by local communities of schools, departments or classes giving training in such subjects; to cooperate with local communities in the maintenance of such schools, department or classes; to prescribe qualifications for the teachers, directors and supervisors of such subjects, and to have full authority to provide for the licensure and renewal of licenses of such teachers, directors and supervisors; to cooperate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors and supervisors of such subjects or to maintain such classes under its own direction and control; and to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational and technical teachers.

**HISTORY: Codes, 1930, § 6705; 1942, § 6491; Laws, 1924, ch. 283; Laws, 1930,**

**ch. 278; Laws, 1940, ch. 176; Laws, 1982, ch. 493, § 10; Laws, 1992, ch. 482, § 2; Laws, 1996, ch. 386, § 1; Laws, 2000, ch. 458, § 2, eff from and after July 1, 2000.**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References —** Duties of director of division of vocational education within state department of education, see § 37-3-25.

Additional provisions as to authority of board, see § 37-31-205.

**Federal Aspects—** Smith-Hughes Act, see 20 USCS §§ 11 et seq.

## § 37-31-9. Duties of state treasurer.

The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriations made by the "Smith-Hughes Act," and he is authorized to receive and to provide for the proper custody of the same, and to make disbursements thereof in the manner provided for in said act and for the purposes therein specified. He shall also pay out any moneys appropriated by the State of Mississippi for the purpose of carrying out the provisions of Sections 37-31-1 through 37-31-15 upon the order of the state board of education.

**HISTORY: Codes, 1930, § 6702; 1942, § 6488; Laws, 1924, ch. 238; Laws, 1930, ch. 278.**

**Cross References —** Duties of state treasurer generally, see § 7-9-9.

Designation of state treasurer as sole agent to receive and disburse funds to be expended under direction of state officials and agencies for benefit of state, see § 7-9-23.

Duties of state treasurer under the Vocational Rehabilitation Law of Mississippi, see § 37-33-31.

Duties of state treasurer under the Vocational Rehabilitation for the Blind Law of Mississippi, see § 37-33-71.

**Federal Aspects—** Smith-Hughes Act, see 20 USCS §§ 11 et seq.

## § 37-31-11. State appropriations for vocational education.

The State of Mississippi shall appropriate sums of money for the support of vocational education from year to year, sufficient at least to equal the amounts allotted year by year to the State of Mississippi for vocational education by the federal government under the provisions of the "Smith-Hughes Act."

**HISTORY: Codes, 1930, § 6708; 1942, § 6494; Laws, 1924, ch. 283; Laws, 1930, ch. 278.**

**Cross References —** Appropriations under the Vocational Rehabilitation Law of Mississippi, see § 37-33-33.

Appropriations under the Vocational Rehabilitation for the Blind Law of Mississippi, see § 37-33-73.

**Federal Aspects—** Smith-Hughes Act, see 20 USCS §§ 11 et seq.

## § 37-31-13. How state appropriations shall be used.

(1) Any appropriation that may be made under the provisions of Sections

37-31-1 through 37-31-15 shall be used by the board for the promotion of vocational education as provided for in the Smith-Hughes Act and for the purpose set forth in Sections 37-31-1 through 37-31-15. The state appropriation shall not be used for payments to high schools which are now receiving other state funds, except in lieu of not more than one-half (½) the amount that may be due such high schools from federal funds. Only such portion of the state appropriation shall be used as may be absolutely necessary to carry out the provisions of Sections 37-31-1 through 37-31-15, and to meet the federal requirements. Except as provided in subsection (2) of this section, the state appropriation shall not be used for payments to high schools for conducting vocational programs for more than ten (10) months in any school year, and only funds other than adequate education program funds may be expended for such purpose.

(2) Subject to annual approval by the State Board of Education, extended contracts for vocational agriculture education services and other related vocational education services which contribute to economic development may be conducted by local school districts, and state appropriations may be used for payments to school districts providing such services. The board of trustees of each school district shall determine whether any proposed services contribute to the economic development of the area. Local districts may apply to the Division of Vocational and Technical Education of the State Department of Education for any state funds available for these extended contracts. The State Board of Education shall establish the application process and the selection criteria for this program. The number of state funded extended contracts approved by the State Board of Education will be determined by the availability of funds specified for this purpose. The State Board of Education's decision shall be final. Payments under this subsection shall only be available to those high schools whose teachers of vocational programs are responsible for the following programs of instruction during those months between the academic years: (a) supervision and instruction of students in agricultural or other vocational experience programs; (b) group and individual instruction of farmers and agribusinessmen; (c) supervision of student members of youth groups who are involved in leadership training or other activity required by state or federal law; or (d) any program of vocational agriculture or other vocational-related services established by the Division of Vocational and Technical Education of the State Department of Education that contribute to the economic development of the geographic area.

**HISTORY: Codes, 1930, § 6709; 1942, § 6495; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1978, ch. 345, § 1; Laws, 1982, ch. 493, § 11; Laws, 1993, ch. 542, § 1; Laws, 2002, ch. 330, § 1, eff from and after July 1, 2002.**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of 1982, ch. 493 effective June 30, 1990.

Sections 37-31-3 and 37-31-5, referred to in this section, were repealed by Laws of 1982, ch. 493, § 19, effective from and after July 1, 1983.

**Cross References —** Director of Division of Vocational and Technical Education responsible for vocational and technical education, see § 37-3-25.

**Federal Aspects—** Smith-Hughes Act, see 20 USCS §§ 11 et seq.

## § 37-31-15. School boards authorized to establish and maintain vocational and technical schools and classes.

The school board may, in its discretion, cooperate with the State Board of Education in the establishment and maintenance of vocational and technical schools or classes giving instruction in vocational and technical training which does not terminate in a bachelors degree to persons in need of such instruction, and may use for paying the cost of such cooperation any monies raised by public taxation in the same manner as monies for other school purposes are used for the maintenance and support of public schools.

**HISTORY: Codes, 1930, § 6707; 1942, § 6493; Laws, 1930, ch. 278; Laws, 1940, ch. 176; Laws, 1944, ch. 296; Laws, 1982, ch. 493, § 12; Laws, 1992, ch. 482, § 3, eff from and after July 1, 1992.**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Law sof 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of 1982, ch. 493 effective June 30, 1990.

### JUDICIAL DECISIONS

**1. In general.**

A school board's posting of a performance bond for the benefit of a private construction company in connection with its job training program was an illegal expenditure; by posting a performance bond as guarantor for a private company, the school board far exceeded its statutory authority to conduct vocational education training, and therefore personal liability for the illegal expenditure would be imposed on board members. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

## SECURING BENEFITS OF FEDERAL SOCIAL SECURITY ACT

Sec.
37-31-31. Declaration of intent.
37-31-33. Utilization of appropriated funds.
37-31-35. Duties of state board.
37-31-37. Reports.
37-31-39. Cooperation authorized.
37-31-41. Payment of funds.

## § 37-31-31. Declaration of intent.

The intention of Sections 37-31-31 through 37-31-41 is to enable the State of Mississippi, by and through the state board of education to secure the benefits of the federal social security act pertaining to services for crippled children, and said sections shall be liberally construed in order to effectuate such intention.

**HISTORY: Codes, 1942, § 6502; Laws, 1936, ch. 290.**

**Federal Aspects—** Social Security Act generally, see 42 USCS §§ 301 et seq.

### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-31-33. Utilization of appropriated funds.

For the purpose of enabling the state board of education to comply with the provisions of the federal social security act and to continue to extend and improve as far as practicable the services now maintained by said state board for locating crippled children and for providing medical, surgical, corrective, and other services, care and treatment, and facilities for diagnosis, hospitalization, and after-care for children who are crippled or who are suffering from conditions which lead to crippling, any and all funds appropriated for physical restoration of crippled children for the above purposes may be used for the purposes set forth in this section.

**HISTORY: Codes, 1942, § 6497; Laws, 1936, ch. 290.**

**Cross References —** Social security and state retirement and disability benefits generally, see § 25-11-3 et seq.
**Federal Aspects—** Social Security Act generally, see 42 USCS §§ 301 et seq.

## § 37-31-35. Duties of state board.

Sections 37-31-31 through 37-31-41, together with funds made available through that section of those sections of the federal social security act which relates to crippled children, together with any and all available state and federal appropriations, shall be administered by the state board of education, and shall be used in the further development of the state's program of physical restoration of crippled children. The state board of education is hereby authorized to accept donations, gifts and bequests and to expend same on approval of the executive officer of the board, for purposes approved under regulations of the state board of education.

**HISTORY: Codes, 1942, § 6498; Laws, 1936, ch. 290.**

## § 37-31-37. Reports.

The state board of education shall make such reports, in such form and containing such information, as the Secretary of Health, Education and Welfare may from time to time require under the terms of the federal social security act, and shall comply with such provisions as the secretary may from time to time find necessary to assure the correctness and verification of such reports.

**HISTORY: Codes, 1942, § 6499; Laws, 1936, ch. 290.**

**Federal Aspects—** Social Security Act generally, see 42 USCS §§ 301 et seq.

## § 37-31-39. Cooperation authorized.

The state board of education shall cooperate with medical, health, nursing and welfare groups and organizations and with any other agencies in the state charged with administering state laws providing for vocational rehabilitation of physically handicapped children. Said state board is hereby authorized, empowered and directed to cooperate with the federal government in such manner as to obtain the benefits of the provisions of the federal social security act pertaining to crippled children.

**HISTORY: Codes, 1942, § 6500; Laws, 1936, ch. 290.**

**Cross References —** Vocational Rehabilitation Law, see § 37-33-11 et seq.

## § 37-31-41. Payment of funds.

All funds made available for carrying out the provisions of Sections 37-31-31 through 37-31-41 shall be paid by the state treasurer on warrants drawn therefor by the state auditor on requisitions of the state superintendent of public education.

**HISTORY: Codes, 1942, § 6501; Laws, 1936, ch. 290.**

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration." Cross References — State superintendent of public education, see §§ 37-3-9, 37-3-11.

# VOCATIONAL AND TECHNICAL SCHOOLS, CLASSES OR COURSES

Sec.

37-31-61. Board authorized to establish and conduct vocational and technical schools, classes or courses.
37-31-63. General powers of those establishing vocational and technical classes or courses.
37-31-65. Funds.
37-31-67. Foregoing sections are supplementary.
37-31-69. School boards authorized to establish vocational apprenticeship programs; participation and curriculum; successful completion and graduation.

## § 37-31-61. Board authorized to establish and conduct vocational and technical schools, classes or courses.

The State Board of Education is hereby authorized and empowered to establish and conduct schools, classes or courses, for preparing, equipping and training citizens of the State of Mississippi for employment in gainful vocational and technical occupations which do not terminate in a bachelors degree, in conjunction with any public school, agricultural high school or community/junior college.

The trustees of such school districts, as classified and defined by law, including those already having this authority, and the trustees of agricultural high schools and community/junior colleges may, with the consent in writing of the State Board of Education, establish and conduct such schools, classes or courses, under the provisions herein stated and under the general supervision of the board.

**HISTORY: Codes, 1942, § 6241; Laws, 1940, ch. 186; Laws, 1982, ch. 493, § 13; Laws, 1992, ch. 482, § 4, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

Laws of 1990, Chapter 589, § 49, amended this section effective July 1, 1990, provided that the Legislature, by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declare that sufficient funds were dedicated and made available for the implementation of Chapter 589. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

**Cross References** — Contracts and cooperation between division of vocational technical education of state department of education and division of job development and training of office of the governor, see § 7-1-363.

Eye protective devices required during participation in certain vocational, industrial arts, and chemical-physical courses, see § 37-11-49.

Career education program in public schools, see § 37-13-58 et seq.

Establishment and maintenance of vocational education departments by public schools and schools for blind and deaf, see § 37-31-15.

Powers of those establishing vocational and technical schools, classes or courses, see § 37-31-63.

Funds for institutions establishing schools, classes or courses under this section, see § 37-31-65.

## JUDICIAL DECISIONS

**1. In general.**

A school board's posting of a performance bond for the benefit of a private construction company in connection with its job training program was an illegal expenditure; by posting a performance bond as guarantor for a private company, the school board far exceeded its statutory authority to conduct vocational education training, and therefore personal liability for the illegal expenditure would be imposed on board members. Smith v. Dorsey, 599 So. 2d 529, 1991 Miss. LEXIS 603 (Miss. 1992).

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 419, 420, 422 et seq.

**CJS.**
78A C.J.S., Schools and School Districts §§ 1068-1076.

## § 37-31-63. General powers of those establishing vocational and technical classes or courses.

The State Board of Education, the trustees of the school districts as classified and defined by law, and the trustees of agricultural high schools or community/junior colleges, are hereby authorized and empowered to accept and use any land, building or buildings, being either the property of the State of Mississippi or of any of the school districts or agricultural high schools or community/junior colleges, or being the property of private sources, which may be designated, donated or leased for the purpose expressed in Section 37-31-61, and to use such funds as may be made available, and to accept donations and contributions for supplies, equipment, and materials incident to the purpose for which any such schools, classes or courses are established.

The board, the trustees of the school districts, as classified and defined by law, and the trustees of agricultural high schools or community/junior colleges, are hereby authorized and empowered to accept and receive donations, contributions and endowments, to charge tuition and registration fees, to receive payment for services rendered or commodities produced incident to training in said schools, courses or classes, and to accept any funds which may be made available for the purpose sought to be accomplished in Section 37-31-61 from any sources.

**HISTORY: Codes, 1942, §§ 6242, 6243; Laws, 1940, ch. 186; Laws, 1982, ch. 493, § 14; Laws, 1992, ch. 482, § 5, eff from and after July 1, 1992.**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References —** Eye protective devices required during participation in certain vocational, industrial arts, and chemical-physical courses, see § 37-11-49.

Agricultural high schools generally, see § 37-27-1 et seq.

Junior Colleges generally, see §§ 37-29-1 et seq.

RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 44, 92, 94, 95, 124.

**CJS.**
78A C.J.S., Schools and School Districts §§ 733 et seq.

## § 37-31-65. Funds.

The funds derived from any sources for any trade school, such as the Mississippi School for the Deaf, Mississippi School for the Blind, the Oakley Youth Development Center, or Parchman Vocational School or other agencies or institutions receiving funds for the purposes of this chapter, which are not operated in connection with any public school, agricultural high school or community/junior college, or by virtue of any tuition, registration fees, or payment for services rendered or commodities produced, shall be the property of the State Board of Education. In the event any public school, agricultural high school or community/junior college establishes any trade school, classes or courses under Section 37-31-61, such funds shall be the property of such public school, agricultural high school or community/junior college, to be expended by the trustees thereof, and shall be expended solely for the expense of operating and conducting the trade school, classes or courses in connection with such public school, agricultural high school or community/junior college. None of such funds shall be commingled with the funds of any other of such schools, and none of such funds shall be commingled with any of the other funds of any of the public schools, agricultural high schools or community/junior colleges. All of such funds so created shall be and are hereby declared to be public funds, as defined by law.

**HISTORY: Codes, 1942, § 6242; Laws, 1940, ch. 186; Laws, 1982, ch. 493, § 15; Laws, 1992, ch. 482, § 6; Laws, 2010, ch. 554, § 1, eff from and after July 1, 2011.**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References —** Agricultural high schools generally, see § 37-27-1 et seq.

Junior colleges generally, see § 37-29-1 et seq.

Mississippi School for the Deaf and Mississippi school for the Blind generally, see §§ 43-5-1 et seq.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 120, 122.

**CJS.**
78 C.J.S., Schools and School Districts §§ 9 et seq.

## § 37-31-67. Foregoing sections are supplementary.

Sections 37-31-61 through 37-31-65 are in addition to and supplementary to existing school laws, and shall not be construed to repeal any laws now in existence governing any of the public schools of this state or the operation thereof.

**HISTORY: Codes, 1942, § 6244; Laws, 1940, ch. 186.**

## § 37-31-69. School boards authorized to establish vocational apprenticeship programs; participation and curriculum; successful completion and graduation.

(1) The school board of a local school district, in its discretion, may

establish and implement a vocational apprenticeship program in the high schools in that district through which students may earn high school units for vocational experience as an alternative to those high school units required by the school district in addition to the core curriculum defined by the State Board of Education. The purpose of a vocational apprenticeship program established pursuant to this section shall be to provide those students with skills and training that will lead to gainful employment in a trade or other specialized vocation.

(2) Students who participate in the vocational apprenticeship program shall be required to complete all high school units comprising the core curriculum, as defined by the State Board of Education. In addition, a student in the vocational apprenticeship program may be awarded credit for an additional eight (8) high school units earned through the vocational apprenticeship program, which units shall apply toward, and must be recognized by the State Board of Education in fulfillment of, the local school district's graduation requirements. Units may be awarded in the vocational apprenticeship program, whereby a student gains actual work experience through employment in a job approved by the local school district. The local school district shall adopt policies governing the participation of students in the vocational apprenticeship program.

(3) Students successfully completing a vocational apprenticeship program established pursuant to this section are entitled to a diploma evidencing graduation from a high school in Mississippi.

**HISTORY: Laws, 2001, ch. 365, § 1, eff from and after July 1, 2001.**

**Cross References —** State Board of Education generally, see § 37-1-1 et seq.

## REGIONAL EDUCATION CENTERS

Sec.
37-31-71. "Regional education center" defined.
37-31-73. Agreements for establishment of center; terms of agreement; board of trustees; fiscal agent.
37-31-75. Expenditures.
37-31-77. Funds not to be charged against homestead exemption reimbursements.
37-31-79. Construction.

### § 37-31-71. "Regional education center" defined.

For the purposes of Sections 37-31-71 through 37-31-79, the term "regional education center" means all facilities utilized for the carrying out of instruction on the level of secondary or postsecondary education or both which are jointly operated by or which accept students on a contractual basis from two (2) or more school districts of this state, or for any school district which encompasses an entire county.

**HISTORY: Codes, 1942, § 6502-1; Laws, 1972, ch. 337, § 1; Laws, 2011, ch. 480, § 15, eff from and after passage (approved Apr. 6, 2011).**

**Cross References —** Authorization of joint operation of schools by adjoining school districts, see § 37-7-403.

Eye protective devices required during participation in certain vocational, industrial arts, and chemical-physical courses, see § 37-11-49.

Public school career education programs, see § 37-13-58 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Both §§ 37-29-267 and 37-31-75 imply legislative intent to permit a municipality to enter into a contractor agreement pursuant to this section that would extend past the term of the current administration of the municipality. Criss, August 7, 1998, A.G. Op. #98-0447.

## § 37-31-73. Agreements for establishment of center; terms of agreement; board of trustees; fiscal agent.

The various school districts, counties, municipalities and community/junior college districts of this state are authorized to enter into agreements between each other and between the school districts and any of the boards of supervisors of any county, the governing authorities of any municipality, or the boards of trustees of any community/junior college district providing for the construction or operation of regional education centers. Any agreement entered into pursuant to this section shall be subject to the approval of the State Board of Education. The agreement shall designate the fiscal agent, among other provisions, provide for the method of financing the construction and operation of the facilities, the manner in which the facilities are to be controlled, operated and staffed, the basis upon which students are to be admitted to the regional education center and transportation provided for students in attendance at the center. The agreement or any subsequent modification to it shall be spread at large upon the minutes of each party to the agreement after having been duly adopted by the governing authorities of each party.

The agreements may provide for the establishment of regional education advisory councils to serve in an advisory capacity to regional education centers, to be made up of representatives of the board of trustees of school districts or community/junior college districts which may be parties to the agreement. Regional education advisory councils of the parties to the agreement will operate at the will of the fiscal agent for the regional education center. The fiscal agent shall have all powers designated to it in the agreement by the parties to the agreement, except for the power to request or require the levy of taxes or the power to issue or require the issuance of any bonds, notes or other evidences of indebtedness, or to call for an election on the question of the issuance of any bonds, notes or other evidences of indebtedness.

**HISTORY: Codes, 1942, § 6502-02; Laws, 1972, ch. 337, § 2; Laws, 1982, ch. 493, § 16; Laws, 1992, ch. 482, § 7; Laws, 1996, ch. 534, § 3; Laws, 2011, ch. 480, § 16, eff from and after passage (approved Apr. 6, 2011).**

**Editor's Notes —** Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References —** Tax levy for construction of vocational and technical educational center, see § 19-9-114.

Agreements between boards of trustees of two or more adjoining school districts as to joint operation of schools, see § 37-7-405.

Approval of agreements between boards of trustees of two or more adjoining school districts as to joint operation of schools, see § 37-7-407.

### OPINIONS OF THE ATTORNEY GENERAL

A city, county, and community college district may, but are not required to, enter into an interlocal agreement to accomplish the construction of a regional vocational education center. Criss, August 7, 1998, A.G. Op. #98-0447.

## § 37-31-75. Expenditures.

The various counties, municipalities, school districts and junior college districts which may become parties to any agreement authorized by Sections 37-31-71 through 37-31-79 are authorized to appropriate and expend any and all funds which may be required to carry out the terms of the agreement from any funds available to any party to the agreement not otherwise appropriated without limitation as to the source of the funds, including minimum foundation program funds, sixteenth section funds, funds received from the federal government or other sources by way of grant, donation or otherwise, and funds which may be available to any such party through the Department of Education or any other agency of the state, regardless of the party to the agreement designated by the agreement to be primarily responsible for the construction or operation of the regional education center and regardless of the limitation on the expenditure of any funds imposed by any other statute. However, no funds whose use was originally limited to the construction of capital improvements shall be utilized for the purpose of defraying the administrative or operating costs of any regional education center. Any one or more of the parties to an agreement may be designated as the fiscal agent or contracting party in carrying out any of the purposes of the agreement, and any and all funds authorized to be spent by any of the parties may be paid over to the fiscal agent or contracting party for disbursement by the fiscal agent or contracting party. Disbursements shall be made and contracted for under the laws and regulations applicable to the fiscal or disbursing agent, except to the extent they may be extended or modified by the provisions of Sections 37-31-71 through 37-31-79. All of the parties to the agreement may issue bonds, negotiable notes or other evidences of indebtedness for the purpose of providing funds for the acquisition of land and for the construction of buildings and permanent improvements under the terms of the agreement under any existing laws authorizing the issuance or sale of bonds, negotiable notes or other evidences of indebtedness to provide funds for any capital improvement.

**HISTORY: Codes, 1942, § 6502-04; Laws, 1972, ch. 337, § 4; Laws, 2011, ch. 480, § 17, eff from and after passage (approved Apr. 6, 2011).**

**Editor's Notes —** Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

**Cross References —** Tax levy for construction of vocational and technical educational center, see § 19-9-114.

Expenditure of funds for joint operation of schools, see § 37-7-409.

### OPINIONS OF THE ATTORNEY GENERAL

Both §§ 37-29-267 and 37-31-75 imply legislative intent to permit a municipality to enter into a contractor agreement pursuant to this section that would extend past the term of the current administration of the municipality. Criss, August 7, 1998, A.G. Op. #98-0447.

## § 37-31-77. Funds not to be charged against homestead exemption reimbursements.

It is expressly provided that any payment from the funds of one (1) governmental authority into the funds of any other governmental authority made in compliance with provisions of Sections 37-31-71 through 37-31-79, shall not be charged against homestead exemption reimbursements under the provisions of Section 27-33-41, Mississippi Code of 1972, or any other similar statute.

**HISTORY: Codes, 1942, § 6502-03; Laws, 1972, ch. 337, § 3, eff from and after passage (approved April 13, 1972).**

## § 37-31-79. Construction.

Sections 37-31-71 through 37-31-79 shall be liberally construed to effectuate the provisions thereof and are hereby declared to be severable. Such sections are supplemental to the authority provided in Sections 37-7-401 through 37-7-413 and other applicable statutes, and any agreement entered into pursuant to Sections 37-31-71 through 37-31-79 shall likewise be effective to confer on the contracting parties all powers contained in the Sections 37-7-401 through 37-7-413 provided such agreement is also approved by the state educational finance commission in accordance therewith.

**HISTORY: Codes, 1942, § 6502-05; Laws, 1972, ch. 337, § 5, eff from and after passage (approved April 13, 1972).**

**Editor's Notes —** Section 37-45-1 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Board of Education.

**Cross References —** Acquisition by school district of land outside its boundaries, and joint construction and operation of schools by adjoining school districts, see § 37-7-401 et seq.

## FUTURE FARMERS OF AMERICA CAMPS

Sec.
37-31-81. Future Farmers of America camps authorized.

### § 37-31-81. Future Farmers of America camps authorized.

The State Board of Education is hereby authorized and directed to establish Future Farmers of America camps. Such locations shall be finally determined by the board.

The board is hereby authorized and empowered to acquire land and to place thereon such buildings and equipment as may be deemed appropriate for the establishment and operation of Future Farmers of America camps. The board shall provide for the operation, maintenance and upkeep of said camps.

**HISTORY: Codes, 1942, § 6503.5; Laws, 1952, ch. 272, §§ 1-3; Laws, 1982, ch. 493, § 17; Laws, 1992, ch. 482, § 8, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

## MANPOWER DEVELOPMENT AND TRAINING FOR SPECIFIC EMPLOYMENT OPPORTUNITIES

Sec.
37-31-101. Title.
37-31-103. Development, establishment and administration of programs; advisory committees.
37-31-105. Allowable costs and expenditures; use of funds.
37-31-106. Repealed.
37-31-107. Acceptance of students; job placement and referral.
37-31-109. Repealed.
37-31-111. Annual reports.

### § 37-31-101. Title.

Sections 37-31-101 through 37-31-111 shall be called the "Mississippi Manpower Development and Training Act of 1974."

**HISTORY: Laws, 1974, ch. 460, § 1, eff from and after July 1, 1974.**

**Cross References** — Contracts and cooperation between division of vocational technical education of state department of education and division of job development and training of the office of the governor, see § 7-1-363.

### § 37-31-103. Development, establishment and administration of programs; advisory committees.

(1) The State Board of Education is authorized to develop and establish special education and skill training programs to fill specific employment

opportunities in areas of the state that have both employment opportunities and able-bodied unemployed and underemployed groups of adults, with priority to be given to unemployed adults.

This program shall be administered by the division of vocational and technical education in community/junior colleges and secondary school systems wherever practical, and shall have general supervision over the programs established by Sections 37-31-101 through 37-31-111. Programs shall parallel, complement and be compatible with the existing structure of all vocational-technical education, both state and federal, as operated under the board.

(2) A comprehensive program of educational activity including skill training shall be developed and tailored to meet the needs of each individual student and the needs of industry for specially trained workers, and programs shall be planned and operated flexibly in order that students may progress individually.

Specific employment objectives that are practical for each student shall be identified early in the program and the individual trained accordingly.

Programs may include, when needed for employment purposes, but not be limited to, basic education, remedial education, attitude training, employability and communications skills, prevocational, vocational and technical education, and supplementary and related instruction for on-the-job training whether conducted at the job site or elsewhere.

(3) Local craft advisory committees made up of potential employers shall be established to advise on the validity of the training curriculum being offered.

(4) Programs shall be developed on a project basis, with all projects considered temporary, and renewed only as long as the dual needs of qualified students exist and potential job opportunities can be identified. Each project shall consist of a minimum of: (a) statement of need, (b) occupational training plan, (c) budget, and (d) budget backup information.

(5) Full-time (forty (40) hours per week), part-time, and upgrading programs are authorized, and all programs as conducted by local school districts shall meet or exceed the standards of the board, and failure to do so by a school district shall result in loss of funds as provided in Sections 37-31-101 through 37-31-111.

(6) Utilization shall be made of existing equipment, materials and facilities purchased by previous programs such as the Manpower Development and Training Program, Public Law 87-415, 42 USCS 2571, et seq., whenever practical and legal.

(7) The board shall review local public school and community/junior college project proposals to determine appropriateness of content, length of training, hours of instruction per week, and whether estimated costs are realistic, and shall evaluate, monitor and provide needed services in support of the local projects.

(8) The board shall be responsible for state level development and coordination of a vocational and technical program which shall include but not be limited to the following: A program which will provide immediate training

for established industries and which provides training for prospective employees for new and expanding industry, such program to be characterized with a strong emphasis on the employment needs of the state.

**HISTORY: Laws, 1974, ch. 460, § 2; Laws, 1980, ch. 377; Laws, 1982, ch. 493, § 18; Laws, 1992, ch. 482, § 9, eff from and after July 1, 1992.**

**Editor's Notes** — The Manpower Development and Training Program, Public Law 87-415 (former 42 USCS §§ 2571 et seq.), referred to in this section, was repealed by Act Dec. 28, 1973, P.L. 93-203, Title VII [VI], § 714 [614], 87 Stat. 883, as amended by Act Dec. 31, 1974, P.L. 93-567, Title I, § 101, 88 Stat. 1845, effective with respect to fiscal years after June 30, 1974. Similar provisions now appear in 29 USCS §§ 1501 et seq.

Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

Public school career education program, see § 37-13-58 et seq.

Junior Colleges generally, see §§ 37-29-1 et seq.

Vocational education generally, see § 37-31-1 et seq.

## § 37-31-105. Allowable costs and expenditures; use of funds.

Allowable costs for public schools may include salaries of instructors, cost of equipment, supplies, supervision, rental of space and equipment, utilities, custodial services, and other costs justifiable for the specific programs. There shall be no cost to students for any training received. The necessary books, tools and supplies shall be provided. All items purchased shall remain the property of the state for future programs and shall not be given to the student. Equipment may be transferred between local public training agencies. Rental for private facilities and minor remodeling and maintenance for public facilities are allowable. There shall be no construction of facilities.

Up to One Hundred Dollars ($100) per student may be expended for medical services necessary for vocational rehabilitation if needed to render the person employable and if no other source of funds is available for this purpose.

Funds appropriated for the purpose of Sections 37-31-101 through 37-31-111, except funds received by virtue of the Fiscal Assistance to State and Local Governments Act, Public Law 92-512, 31 USCS 1221, et seq., may be used as matching funds to obtain federal funds for similar objectives whenever needed.

**HISTORY: Laws, 1974, ch. 460, § 3, eff from and after July 1, 1974.**

**Editor's Notes** — Former 31 USCS § 1221 (P.L. 92-512), referred to in this section, was revised, renumbered and enacted into Positive Law by Act Sept. 13, 1982, P.L. 97-258, 96 Stat. 877, and is now codified as 31 USCS § 6702.

## § 37-31-106. Repealed.

Repealed by Laws, 1999, ch. 572, § 4, eff from and after August 15, 1999. [Laws, 1994, ch. 581, § 49, eff from and after July 1, 1994]

**Editor's Notes** — Former § 37-31-106 related to manpower development and training carryover fund. For present similar provisions, see § 37-4-11.

## § 37-31-107. Acceptance of students; job placement and referral.

Qualified students for the classes or courses may be accepted by the schools from any source, but priority of enrollment will be given referrals from the department of public welfare, state employment service, vocational rehabilitation, and nonretired veterans. The state employment service will assist with student job placement and referral whenever possible.

For the purposes of Sections 37-31-101 through 37-31-111, a qualified student is an adult, at least eighteen (18) years old, who is under-employed or unemployed and is not enrolled in school.

Students will not be eligible if they have dropped out of regular school for the specific purpose of enrolling in the manpower programs.

**HISTORY: Laws, 1974, ch. 460 § 4, eff from and after July 1, 1974.**

**Editor's Notes —** Section 43-1-1 provides that the term "State Department of Public Welfare" or "State Board of Public Welfare" shall mean the Department of Human Services.

## § 37-31-109. Repealed.

Repealed by Laws, 1982, ch. 493, § 20, eff from and after July 1, 1983. [Laws, 1974, ch. 460, § 5]

**Editor's Notes —** Former § 37-31-109 provided for an advisory board, and for the review and evaluation of manpower programs.

## § 37-31-111. Annual reports.

An annual report on program activities and results shall be prepared by the state department of education, vocational division, and submitted to the legislature with the overall annual vocational education report.

**HISTORY: Laws, 1974, ch. 460, § 6, eff from and after July 1, 1974.**

# FUNDS FOR MISSISSIPPI BOARD OF VOCATIONAL AND TECHNICAL EDUCATION

Sec.
37-31-201. Definitions.
37-31-203. Repealed.
37-31-205. Authority of board.
37-31-207. Duties of board.
37-31-209. Repealed.
37-31-211. Appropriations for vocational and technical education to be made to board.

## § 37-31-201. Definitions.

Wherever used in this chapter, or in any other statute, rule or regulation affecting the Vocational Education Division of the State Department of Education and any of its functions or duties:

(a) The word "board" shall mean and refer to the State Board of Education.

(b) The word "division" shall mean and refer to the Mississippi Division of Vocational and Technical Education of the State Department of Education.

**HISTORY: Laws, 1982, ch. 493, § 1; Laws, 1992, ch. 482, § 10, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

## § 37-31-203. Repealed.

Repealed by Laws, 1982, ch. 493, § 2(5), effective from and after June 30, 1986.

[Laws, 1982, ch. 493, § 2]

**Editor's Notes** — Former Section 37-31-203 provided for the establishment of the Mississippi Board of Vocational and Technical Education.

## § 37-31-205. Authority of board.

(1) The State Board of Education shall have the authority to:

(a) Expend funds received either by appropriation or directly from federal or private sources;

(b) Channel funds to secondary schools, community and junior colleges and regional vocational-technical facilities according to priorities set by the board;

(c) Allocate funds on an annual budgetary basis;

(d) Set standards for and approve all vocational and technical education programs in the public school system and community and junior colleges or other agencies or institutions which receive state funds and federal funds for such purposes, including, but not limited to, the following vocational and technical education programs: agriculture, trade and industry, occupational home economics, consumer and homemaking education, distributive education, business and office, health, industrial arts, guidance services, technical education, cooperative education, and all other specialized training not requiring a bachelor's degree, with the exception of programs of nursing education regulated under the provisions of Section 37-129-1. The State Board of Education shall authorize local school boards, within such school board's discretion, to offer distributive education as a one-hour or two-hour block course. There shall be no reduction of payments from state funding for distributive education due to the selection of either the one-hour or two-hour course offering;

(e) Set and publish licensure standards for vocational and technical education personnel. The State Board of Education shall recognize a vocational and technical education teacher's work when school is not in session which is in the teacher's particular field of instruction as a means for the teacher to fulfill the requirements for renewal of the teacher's license. The board shall establish, by rules and regulations, the documentation of such work which must be submitted to the board and the number of actual working hours required to fulfill renewal requirements. If a vocational and technical education teacher who does not have a bachelor's degree takes classes in fulfillment of licensure renewal requirements, such classes must be in furtherance of a bachelor's degree;

(f) Require data and information on program performance from those programs receiving state funds;

(g) Expend funds to expand career information;

(h) Supervise and maintain the Division of Vocational and Technical Education and to utilize, to the greatest extent possible, the division as the administrative unit of the board responsible for coordinating programs and services with local institutions;

(i) Utilize appropriate staff of the State Department of Education to perform services for the vocational student organizations, including, but not limited to, procurement, accounting services, tax services and banking services. The department may also procure and pay for annual audits of the vocational student organizations using vocational funds or other available funds of the State Department of Education. It is the intent of this provision that any related costs be paid with vocational funds appropriated by the Legislature;

(j) Promulgate such rules and regulations necessary to carry out the provisions of this chapter in accordance with Section 25-43-1 et seq.;

(k) Set standards and approve all vocational and technical education equipment and facilities purchased and/or leased with state and federal vocational funds;

(*l*) Encourage provisions for lifelong learning and changing personal career preferences and advancement of vocational and technical education students through articulated programs between high schools and community and junior colleges;

(m) Encourage the establishment of new linkages with business and industry which will provide for a better understanding of essential labor market concepts;

(n) Periodically review the funding and reporting processes required of local school districts by the board or division with the aim of simplifying or eliminating inefficient practices and procedures;

(o) Assist in the development of high technology programs and resource centers to support current and projected industrial needs;

(p) Assist in the development of a technical assistance program for business and industry which will provide for industrial training and services, including the transfer of information relative to new applications and advancements in technology; and

(q) Enter into contracts and agreements with the Mississippi Community College Board for conditions under which vocational and technical education programs in community and junior colleges shall receive state and federal funds which flow through the State Board of Education for such purposes.

(2) It is the intent of the Legislature that no vocational and technical education course or program existing on June 30, 1982, shall be eliminated by the State Board of Education under the authority vested in paragraph (d) of subsection (1) of this section prior to June 30, 1985. It is further the intent of the Legislature that no vocational and technical education teacher or other personnel employed on June 30, 1983, shall be discharged due to licensure standards promulgated by the board under paragraph (e) of subsection (1) of this section, if any such teacher or personnel shall have complied with any newly published licensure standards by June 30, 1985. Nothing contained in this section shall be construed to abrogate or affect in any manner the authority of local public school districts or community and junior colleges to eliminate vocational and technical education courses or programs or to discharge any vocational and technical education teacher or other personnel.

(3) The State Board of Education and the Mississippi Community College Board may provide that every vocational and technical education course or program in Mississippi may integrate academic and vocational-technical education through coherent sequences of courses, so that students in such programs achieve both academic and occupational competencies. The boards may expend federal funds available from the 1990 Perkins Act, or other available federal funds, for the alignment of vocational-technical programs with academic programs through the accreditation process and the teacher licensure process.

**HISTORY: Laws, 1982, ch. 493, § 3; Laws, 1986, ch. 434, § 13; Laws, 1992, ch. 482, § 11; Laws, 1993, ch. 599, § 1; Laws, 1999, ch. 572, § 3; Laws, 2000, ch. 458, § 1; Laws, 2002, ch. 330, § 2; Laws, 2003, ch. 363, § 1; Laws, 2014, ch. 397, § 32, eff from and after July 1, 2014.**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

The 1990 Perkins Act, referred to in this section, is the Carl D. Perkins Vocational and Applied Technology Education Act, and is codified as 20 USCS §§ 2301 et seq.

**Cross References** — State Board of Education generally, see § 37-1-1 et seq.

State Department of Education generally, see § 37-3-1 et seq.

Mississippi Community College Board generally, see §§ 37-4-1 et seq.

## § 37-31-207. Duties of board.

The State Board of Education shall have the following duties:

(a) To seek the best available projections of employment and occupations for Mississippians;

(b) To utilize these projections and other considerations to set vocational and technical education priorities;

(c) To utilize the services of all state agencies having information regarding the purposes of this chapter;

(d) To cooperate with the governor's office of job development and training and the board of economic development to prevent duplication and provide continuity of employment and training services;

(e) To conduct evaluations of the success or failure of vocational-technical programs, including the extent to which training actually leads to jobs in the field in which the student was trained;

(f) Obtain and publish data and information on program performance from those vocational-technical programs receiving state funds; and

(g) To notify local school districts and public community/junior colleges prior to March 1 annually of any discontinuation of ongoing vocational programs which would affect the renewing of contracts with vocational personnel.

**HISTORY: Laws, 1982, ch. 493, § 4; Laws, 1992, ch. 482, § 12, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

## § 37-31-209. Repealed.

Repealed by Laws, 2018, ch. 395, § 1, eff from and after July 1, 2018.

§ 37-31-209. [Laws, 1982, ch. 493, § 5; Laws, 1992, ch. 482, § 13, eff from and after July 1, 1992.]

**Editor's Notes** — Former § 37-31-209 created an advisory council for the Mississippi Board of Vocational and Technical Education and prescribed its composition, powers and duties.

## § 37-31-211. Appropriations for vocational and technical education to be made to board.

The Legislature shall appropriate to the State Board of Education those state funds to be expended by the board through the Division of Vocational and Technical Education of the State Department of Education.

**HISTORY: En, Laws, 1982, ch. 493, § 17; Laws, 1992, ch. 482, § 14, eff from and after July 1, 1992.**

**Editor's Notes** — Laws of 1990, ch. 424, § 1, effective June 30, 1990, amended Laws of 1982, ch. 493, § 23, so as to remove a provision providing for the repeal of Laws of 1982, ch. 493 effective June 30, 1990.

# CHAPTER 33.

# CIVILIAN VOCATIONAL REHABILITATION

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Vocational Rehabilitation Law. .......... 37-33-11
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## IN GENERAL

Sec.
37-33-1. Federal vocational rehabilitation act accepted.

### § 37-33-1. Federal vocational rehabilitation act accepted.

The State of Mississippi accepts all of the provisions and benefits of an act passed by the Congress of the United States entitled, "The Rehabilitation Act of 1973," as amended.

**HISTORY: Codes, 1930, § 6711; 1942, § 6504; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 2002, ch. 463, § 1, eff from and after July 1, 2002.**

**Federal Aspects—** Rehabilitation Act of 1973, see 29 USCS §§ 701 et seq.

#### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## VOCATIONAL REHABILITATION LAW

Sec.
37-33-11. Short title.
37-33-13. Definitions.
37-33-15. Administration of Office of Vocational Rehabilitation; general powers and duties of Director.
37-33-17. Acceptance and disposition of gifts and donations; annual report.
37-33-19. Duties of Office of Vocational Rehabilitation.

Sec.

37-33-21. Cooperation with federal government.

37-33-23. Eligibility for vocational rehabilitation; services provided.

37-33-25. Hearings.

37-33-27. Maintenance; right not transferable or assignable; exempt from creditors' claims.

37-33-29. Misuse of vocational rehabilitation lists and records unlawful; misdemeanor.

37-33-31. Receipt and disbursement of vocational rehabilitation funds.

37-33-33. Appropriations.

37-33-35. Saving clause.

## § 37-33-11. Short title.

Sections 37-33-11 through 37-33-35 shall be known as the "Vocational Rehabilitation Law of Mississippi."

**HISTORY: Codes, 1942, § 6504.1; Laws, 1948, ch. 289, § 1.**

### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).
IDEA - A Handy Desk Reference to the Law, Regulations and Educators (LexisNexis Publishing Solutions Government).

## § 37-33-13. Definitions.

As used in the Vocational Rehabilitation Law:

(a) "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled;

(b) "Department" or "agency" means the State Department of Rehabilitation Services;

(c) "Director" means the Director of the Office of Vocational Rehabilitation;

(d) "Executive director" means the Executive Director of the State Department of Rehabilitation Services;

(e) "Employment outcome" means, with respect to an individual entering or retaining full-time or, if appropriate part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(f) "Individual with a disability" means any individual who has a physical or mental impairment, whose impairment constitutes or results in a substantial impediment to employment, and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services;

(g) “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an individualized plan for employment;

(h) “Occupational license” means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(i) “Office” means the Office of Vocational Rehabilitation of the State Department of Rehabilitation Services;

(j) “Personal assistance services” means assistance in a range of services provided by one or more persons designed to assist an eligible individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance. The services must be designed to increase the individual’s control in life and ability to perform every day activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services;

(k) “Physical restoration services” means (i) corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; (ii) diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; (iii) dentistry; (iv) nursing services; (v) necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; (vi) drugs and supplies; (vii) prosthetic and orthotic devices; (viii) eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws; (ix) podiatry; (x) physical therapy; (xi) occupational therapy; (xii) speech or hearing therapy; (xiii) mental health services; (xiv) treatment of either acute or chronic medical restoration services, or that are inherent in the condition under treatment; (xv) special services for the treatment of individuals with end-stage renal disease; and (xvi) other medical or medically-related rehabilitation services;

(*l*) “Prosthetic appliance” means any artificial device necessary to support, to take the place of a part of the body, or to increase the acuity of a sense organ;

(m) “Regulations” means regulations made by the executive director with the approval of the state board.

(n) "Rehabilitation engineering services" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community;

(o) "Rehabilitation training" means all necessary training provided to an eligible individual with a disability to enable him or her to overcome his or her employment handicap, including, but not limited to, manual, preconditioning, prevocational, vocational and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(p) "State board" means the State Board of Rehabilitation Services;

(q) "Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities;

(r) "Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the designated state unit (i) for a period of time not to exceed eighteen (18) months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (ii) following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment;

(s) "Vocational rehabilitation" and "vocational rehabilitation services" mean, for an eligible individual with a disability, services as appropriate and required to assist in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including, but not limited to, services in accordance with definitions in the most current amendment of the Rehabilitation Act: (i) assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology; (ii) assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology; (iii) vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice; (iv) referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about client assistance programs; (v) physical and mental restoration services, to the extent that financial support is not readily available from a source other than the State Department of Rehabilitation Services (such as through health insurance or a comparable service or benefit); (vi) vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher learning (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this law unless maximum efforts have been made by the state unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training; (vii) maintenance; (viii) transportation in connection with the rendering of any vocational rehabilitation service; (ix) vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome; (x) interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel; (xi) reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind; (xii) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; (xiii) supported employment services: (xiv) personal assistance services; (xv) post-employment services; (xvi) occupational licenses, tools, equipment, initial stocks, and supplies; (xvii) rehabilitation technology including vehicular modification, telecommunications, sensory, and other technological aids and devices; (xviii) transition services; (xix) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; (xx) other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

**HISTORY: Codes, 1942, § 6504.2; Laws, 1948, ch. 289, § 2; Laws, 1983, ch. 521, § 8; Laws, 1989, ch. 544, § 69; Laws, 1990, ch. 522, § 5; Laws, 1991, ch. 608, § 3, eff from and after July 1, 1991, (became law without the Governor's signature); Laws, 2002, ch. 463, § 2, eff from and after July 1, 2002.**

**Cross References —** State Department of Rehabilitation Services generally, see § 37-33-151 et seq.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-15. Administration of Office of Vocational Rehabilitation; general powers and duties of Director.

The Office of Vocational Rehabilitation established by Section 37-33-153 shall be administered by a director appointed by the executive director in conformity with policies adopted by the department. The Director of the Office of Vocational Rehabilitation shall devote his or her full time to the administration of vocational rehabilitation. In carrying out his or her duties under the Vocational Rehabilitation Law, the director:

(a) Shall, with the approval of the executive director, make regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility and investigations and determinations thereof for vocational rehabilitation services, procedures for fair hearings, and such other regulations as are found necessary to carry out the purposes of that law;

(b) Shall, with the approval of the executive director, establish appropriate subordinate administrative units within the office;

(c) Shall, with the approval of the executive director, recommend for appointment such personnel as may be necessary for the efficient performance of the functions of the office;

(d) Shall prepare and submit to the state board through the executive director annual reports of activities and expenditures and, before each regular session of the Legislature, shall submit estimates of sums required for carrying out the Vocational Rehabilitation Law and estimates of the amounts to be made available for this purpose from all sources;

(e) Shall, if the executive director so authorizes, make certifications on behalf of the executive director for the disbursement of funds available for vocational rehabilitation;

(f) Shall, with the approval of the executive director and the state board, appoint boards as required by federal law and regulations;

(g) Shall, with the approval of the executive director and the state board, take such other action as he or she deems necessary or appropriate to carry out the purposes of the Vocational Rehabilitation Law;

(h) May, with the approval of the executive director and the state board, delegate to any officer or employee of the office such of his or her powers and duties, except the making of regulations and the making of recommendations for appointment of personnel, as he or she finds necessary to carry out the purposes of the Vocational Rehabilitation Law.

**HISTORY: Laws, 1991, ch. 608, § 4; Laws, 2002, ch. 463, § 3, eff from and after July 1, 2002.**

**Editor's Notes** — A former Section 37-33-15 [Codes, 1942, § 6504.3; Laws, 1948, ch. 289, § 3; 1983, ch. 521, § 9], which specified the duties of the director of the division of vocational rehabilitation, was repealed by Laws of 1989, ch. 544, § 89, eff from and after July 1, 1989.

Laws of 1991, ch. 608, § 4, effective July 1, 1991, became law without the Governor's signature.

## § 37-33-17. Acceptance and disposition of gifts and donations; annual report.

The director, with the approval of the executive director and the state board, may accept and use gifts and donations made unconditionally or otherwise for carrying out the purposes of the Vocational Rehabilitation Law, from either public or private sources. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of that law may be so accepted and shall be held, invested, reinvested and used in accordance with the conditions of the gift. All monies received as gifts or donations, except conditional gifts requiring other treatments, shall be deposited in the State Treasury and shall constitute a permanent fund to be called the "Special Fund for the Vocational Rehabilitation of Individuals with Disabilities" and shall be used by the state board for such purposes. The state board shall make a report annually to the Legislature setting forth the condition of vocational rehabilitation of eligible individuals with disabilities in Mississippi, the expenditures made from state and federal funds in carrying out the provisions of that law or its purpose, and a detailed statement of all gifts and donations offered and accepted, together with the names of donors and the respective amounts prescribed by each and all the disbursements made therefrom.

**HISTORY: Codes, 1930, § 6714; 1942, § 6507; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1948, ch. 289, § 8; Laws, 1970, ch. 380, § 1; Laws, 1983, ch. 521, § 10; Laws, 1989, ch. 544, § 70; Laws, 1990, ch. 522, § 6; Laws, 1991, ch. 434, § 3; Laws, 1991, ch. 608, § 5, eff from and after July 1, 1991, (became law without the Governor's signature); Laws, 2002, ch. 463, § 4, eff from and after July 1, 2002.**

**Editor's Notes —** Laws of 2010, ch. 558, § 6, provides:
"SECTION 6. Sections 1, 2 and 3, Chapter 564, Laws of 2007, which authorize the Mississippi Development Authority to lease the Old School for the Blind property, are hereby repealed."

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

### RESEARCH REFERENCES

**Am. Jur.**
67B Am. Jur. 2d, Schools §§ 44, 92, 94, 95, 120, 122.

**CJS.**
78A C.J.S., Schools and School Districts §§ 733, 734.

## § 37-33-19. Duties of Office of Vocational Rehabilitation.

Except as may be otherwise provided by law for the vocational rehabilitation of the blind, the state board, through the Office of Vocational Rehabilitation, shall provide vocational rehabilitation services to eligible individuals with disabilities determined by the director to be eligible therefor, and in carrying out the purposes of the Vocational Rehabilitation Law, the office is authorized among other things:

(a) To cooperate with other departments, agencies and institutions, both public and private, in providing for the vocational rehabilitation of eligible individuals with disabilities, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of that law, such programs, facilities and services as may be necessary or desirable;

(b) To conduct research and compile statistics relating to the vocational rehabilitation of eligible individuals with disabilities;

(c) To prescribe and provide such courses of vocational training as may be necessary for the vocational rehabilitation of eligible individuals with disabilities.

**HISTORY: Codes, 1942, § 6504.4; Laws, 1948, ch. 289, § 4; Laws, 2002, ch. 463, § 5, eff from and after July 1, 2002.**

**Cross References —** Vocational rehabilitation for the blind, see §§ 37-33-51 et seq.

### § 37-33-21. Cooperation with federal government.

The state board, through the Office of Vocational Rehabilitation, shall cooperate under agreements with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation, and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and comply with such conditions as may be necessary to secure the full benefits of those federal statutes and appropriations, administer any legislation pursuant thereto enacted by the State of Mississippi, direct the disbursement and administer the use of all funds provided by the federal government or this state for the vocational rehabilitation of individuals with disabilities of this state and do all things necessary to insure the vocational rehabilitation of individuals with disabilities.

**HISTORY: Codes, 1930, § 6713; 1942, § 6506; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1948, ch. 289, § 5; Laws, 2002, ch. 463, § 6, eff from and after July 1, 2002.**

**Cross References —** Duty of worker's compensation commission to cooperate with federal, state and local agencies in rehabilitation of handicapped workers, see § 71-3-105.

### § 37-33-23. Eligibility for vocational rehabilitation; services provided.

Vocational rehabilitation services may be provided to any eligible individuals with disabilities who are present in the state at the time of filing an application therefor and whose vocational rehabilitation, the director determines after full investigation, can be satisfactorily achieved.

Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state board under that agreement, the following rehabilitation services may be provided to eligible individuals with disabilities found to require vocational rehabilitation services to achieve an employment outcome:

(a) Physical restoration;

(b) Transportation for vocational rehabilitation services to the nature and extent of the services necessary;

(c) Occupational licenses;

(d) Placement equipment, tools, and supplies;

(e) Maintenance;

(f) Training books and materials.

**HISTORY: Codes, 1942, § 6504.5; Laws, 1948, ch. 289, § 9; Laws, 2002, ch. 463, § 7, eff from and after July 1, 2002.**

**Cross References —** Eye protective devices required during participation in certain vocational, industrial arts, and chemical-physical courses, see § 37-11-49.

## § 37-33-25. Hearings.

Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the office shall be entitled, in accordance with regulations promulgated by the state board, to a fair hearing.

**HISTORY: Codes, 1942, § 6504.7; Laws, 1948, ch. 289, § 11; Laws, 2002, ch. 463, § 8, eff from and after July 1, 2002.**

## § 37-33-27. Maintenance; right not transferable or assignable; exempt from creditors' claims.

The right of eligible individuals with disabilities to maintenance under the Vocational Rehabilitation Law shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors.

**HISTORY: Codes, 1942, § 6504.6; Laws, 1948, ch. 289, § 10; Laws, 2002, ch. 463, § 9, eff from and after July 1, 2002.**

**Cross References —** Right of individual who is blind to maintenance not transferable or assignable and is exempt from creditors' claims, see § 37-33-67.

## § 37-33-29. Misuse of vocational rehabilitation lists and records unlawful; misdemeanor.

It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program, for eligible individuals with disabilities, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties, except in response to summons, subpoena or other order of a court. Any violation of this section shall be a misdemeanor and punishable accordingly.

**HISTORY: Codes, 1942, § 6504.8; Laws, 1948, ch. 289, § 12; Laws, 2002, ch. 463, § 10, eff from and after July 1, 2002.**

**Cross References —** Imposition of standard state assessment n addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-33-31. Receipt and disbursement of vocational rehabilitation funds.

The State Treasurer is designated as the custodian of all funds received by the state from appropriations made by the Congress of the United States or from other sources for the purpose of carrying out any state or federal statutes pertaining to vocational rehabilitation. The State Treasurer is authorized to receive and provide for the proper custody of such funds and to establish such special funds and accounts as may be necessary. He shall make disbursements therefrom for vocational rehabilitation purposes upon requisition by the executive director or when so authorized by the director on behalf of the executive director and upon the issuance of warrants thereunder by the State Fiscal Officer.

**HISTORY: Codes, 1930, § 6712; 1942, § 6505; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1948, ch. 289, § 6; Laws, 1983, ch. 521, § 11; Laws, 1989, ch. 544, § 71; Laws, 1991, ch. 608, § 6, eff from and after July 1, 1991, (became law without the Governor's signature).**

**Editor's Notes —** Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

**Cross References —** Duties of state treasurer generally, see § 7-9-9.

Designation of state treasurer as sole agent to receive and disburse funds to be expended under the direction of state officials and agencies for benefit of state, see § 7-9-23.

Designation of state treasurer as custodian of all federal moneys received under Smith-Hughes Act, see § 37-31-9.

Creation and organization of department of human services; executive director; see § 43-1-2.

### RESEARCH REFERENCES

**Am. Jur.**

67B Am. Jur. 2d, Schools §§ 120, 122.

**CJS.**

78 C.J.S., Schools and School Districts §§ 9 et seq.

## § 37-33-33. Appropriations.

Budget estimates of the amount of appropriations needed each fiscal year for vocational rehabilitation services and for the administration of said program shall be submitted in such manner as may be provided by law, and sufficient funds for the purpose of carrying out the provisions of the Vocational Rehabilitation Law shall be appropriated by the legislature. In the event federal funds are available to the State of Mississippi for vocational rehabilitation purposes, the division of vocational rehabilitation is authorized to comply with such requirements as may be necessary to obtain said federal funds in the maximum amount and most advantageous proportion possible insofar as this may be done without violating other provisions of the state law and constitution. In the event the national congress fails in any year to appropriate funds for grants-in-aid to the state for vocational rehabilitation purposes, the state legislature shall appropriate such funds as may be necessary to carry out the provisions of said law.

**HISTORY: Codes, 1930, § 6715; 1942, § 6508; Laws, 1924, ch. 283; Laws, 1930, ch. 278; Laws, 1948, ch. 289, § 7.**

**Cross References —** Appropriation of moneys for vocational education to match federal appropriations under Smith-Hughes Act, see § 37-31-11.

## § 37-33-35. Saving clause.

The legislature reserves the right to amend or repeal all or any part of the Vocational Rehabilitation Law at any time, and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by said law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal said law at any time.

**HISTORY: Codes, 1942, § 6508.2; Laws, 1948, ch. 289, § 14.**

## VOCATIONAL REHABILITATION FOR THE BLIND

Sec.
37-33-51. Short title.
37-33-53. Definitions.
37-33-54. Administration of Vocational Rehabilitation for the Blind Law.
37-33-55. General powers and duties of director of Office of Vocational Rehabilitation for the Blind.
37-33-57. Acceptance and disposition of gifts and donations; annual report.
37-33-59. Duties of department.
37-33-61. Cooperation with federal government.
37-33-63. Eligibility for vocational rehabilitation; services provided.
37-33-65. Hearings.
37-33-67. Maintenance; right not transferable or assignable; exempt from creditors' claims.
37-33-69. Misuse of vocational rehabilitation lists and records; misdemeanor.
37-33-71. Receipt and disbursement of vocational rehabilitation funds.
37-33-73. Appropriations.
37-33-75. Saving clause.

## § 37-33-51. Short title.

Sections 37-33-51 through 37-33-75 shall be known as the "Vocational Rehabilitation for the Blind Law of Mississippi."

**HISTORY: Codes, 1942, § 6508.5-01; Laws, 1948, ch. 303, § 1.**

### RESEARCH REFERENCES

**Practice References.**
Education Law (Matthew Bender).

## § 37-33-53. Definitions.

As used in the Vocational Rehabilitation for the Blind Law:

(a) "Department" or "agency" means the State Department of Rehabilitation Services;

(b) "Director" means the Director of the Office of Vocational Rehabilitation for the Blind;

(c) "Executive director" means the Executive Director of the State Department of Rehabilitation Services;

(d) "Independent living services" includes, but are not limited to, the following services in accordance with definitions in the most current amendment of the Rehabilitation Act: (i) independent living core services (information and referral services, independent living skills training, peer counseling including cross-disability peer counseling, and individual and systems advocacy) and: (ii) counseling services, including psychological, psychotherapeutic, and related services; (iii) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of the Rehabilitation Act and of the titles of the Rehabilitation Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities); (iv) rehabilitation technology; (v) mobility training; (vi) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services; (vii) personal assistance services, including attendant care and the training of personnel providing such services; (viii) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services; (ix) consumer information programs on rehabilitation and independent living services available under the Rehabilitation Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under the Rehabilitation Act; (x) education and training necessary for living in a community and participating in community activities; (xi) supported living; (xii) transportation, including referral and assistance for that transportation and training in the use of public transportation vehicles and systems; (xiii) physical rehabilitation; (xiv) therapeutic treatment; (xv) provision of needed prostheses and other appliances and devices;

(xvi) individual and group social and recreational services; (xvii) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options; (xviii) services for children; (xix) services under other federal, state, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities; (xx) appropriate preventive services to decrease the need of individuals assisted under the Rehabilitation Act for similar services in the future; (xxi) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and (xxii) such other services as may be necessary and not inconsistent with the provisions of the most current amendment of the Rehabilitation Act;

(e) "Individual who is blind" means any person with insufficient vision to perform vocational or independent living tasks for which sight is essential;

(f) "Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment;

(g) "Physical restoration services" means (i) corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; (ii) diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; (iii) dentistry; (iv) nursing services; (v) necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; (vi) drugs and supplies; (vii) prosthetic and orthotic devices; (viii) eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws; (ix) podiatry; (x) physical therapy; (xi) occupational therapy; (xii) speech or hearing therapy; (xiii) mental health services; (xiv) treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment; (xv) special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and (xvi) other medical or medically related rehabilitation services;

(h) "Prosthetic appliance" means any artificial device necessary to support, to take the place of, a part of the body, or to increase the acuity of a sense organ;

(i) "Occupational licenses" means any license, permit or other written authority required by any government unit to be obtained in order to engage in an occupation;

(j) "Office" means the Office of Vocational Rehabilitation for the Blind;

(k) "Regulations" means regulations made by the director with the approval of the executive director and the state board, including regulations pertaining to independent living services;

(*l*) "Rehabilitation engineering services" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community;

(m) "Rehabilitation training" means all necessary training provided to an individual who is blind to enable him or her to overcome his or her substantial impediment to employment, including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(n) "Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the department (i) for a period of time not to exceed eighteen (18) months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (ii) following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment;

(o) "State board" means the State Board of Rehabilitation Services;

(p) "Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities;

(q) "Vocational rehabilitation" and "vocational rehabilitation services" mean, for an individual who is blind, services available to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including, but not limited to, services in accordance with definitions in the most current amendment of the Rehabilitation Act: (i) assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology; (ii) assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology; (iii) vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice; (iv) referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about client assistance programs; (v) physical and mental restoration services, to the extent that financial support is not readily available from a source other than the State Department of Rehabilitation Services (such as through health insurance or a comparable service or benefit); (vi) vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this law unless maximum efforts have been made by the state unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training; (vii) maintenance; (viii) transportation in connection with the rendering of any vocational rehabilitation service; (ix) vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome; (x) interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel; (xi) reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind; (xii) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; (xiii) supported employment services; (xiv) personal assistance services; (xv) post-employment services; (xvi) occupational licenses, tools, equipment, initial stocks, and supplies; (xvii) rehabilitation technology including vehicular modification, telecommunications, sensory, and other technological aids and devices; (xviii) transition services; (xix) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; (xx) other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

**HISTORY: Codes, 1942, § 6508.5-02; Laws, 1948, ch. 303, § 2; Laws, 1964, ch. 447, § 1; Laws, 1975, ch. 434, § 1; Laws, 1989, ch. 467, § 1; Laws, 1989, ch. 544, § 91; Laws, 1990, ch. 522, § 7; Laws, 1991, ch. 608, § 28, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 14, eff from and after July 1, 2002.**

**Cross References —** Vocational rehabilitation for the blind agency not subject to

Board of Trustees for the School for the Blind, see § 37-33-54.

Department of Rehabilitation Services, see § 37-33-153.

Board of Rehabilitation Services, see § 37-33-155.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-54. Administration of Vocational Rehabilitation for the Blind Law.

The State Department of Rehabilitation Services, through the Office of Vocational Rehabilitation for the Blind, shall administer the Vocational Rehabilitation for the Blind Law as prescribed in Sections 37-33-53 through 37-33-75, Sections 43-3-3 through 43-3-15 and Section 43-3-93. The executive director of the department shall assign to the office such powers and duties deemed appropriate to carry out the lawful functions of this law and any federal law or regulation.

**HISTORY: Laws, 1989, ch. 544, § 90; Laws, 1991, ch. 608, § 29, eff from and after July 1, 1991, (became law without the Governor's signature).**

**Cross References** — General provisions regarding reorganization of executive branch of government, see § 7-17-1 et seq.

Department of Rehabilitation Services generally, see §§ 37-33-151 et seq.

Powers and duties of the executive director of the State Department of Rehabilitation Services, see § 37-33-161.

Transfer of functions, personnel, appropriations, etc., to Department of Rehabilitation services, see § 37-33-201.

## § 37-33-55. General powers and duties of director of Office of Vocational Rehabilitation for the Blind.

The Office of Vocational Rehabilitation for the Blind established by Section 37-33-153 shall be administered by the director under supervision of the executive director and the state board, in conformity with federal policies adopted by the department. The director shall be selected by the executive director in accordance with established personnel standards and on the basis of his or her education, training, experience and administrative ability. The director shall devote his or her full time to the administration of vocational rehabilitation. In carrying out his or her duties under the Vocational Rehabilitation for the Blind Law, the director:

(a) Shall, with the approval of the executive director, make regulations in conformity with the most recent amendment of the federal Rehabilitation Act and its associated regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility and investigations and determinations thereof for vocational rehabilitation services, procedures for fair hearings, and such other regulations as are found necessary to carry out the purposes of that law;

(b) Shall, with the approval of the executive director, establish appropriate subordinate administrative units within the office for providing vocational rehabilitation, independent living, supported employment, rehabilitation engineering and other services to children, adolescents and adults under federal and state regulatory guidelines;

(c) Shall, with the approval of the executive director, recommend for appointment of such personnel as may be necessary for the efficient performance of the functions of the office;

(d) Shall prepare and submit to the state board through the executive director annual reports of activities and expenditures and, before each regular session of the Legislature, shall submit estimates of sums required for carrying out the Vocational Rehabilitation for the Blind Law and estimates of the amounts to be made available for this purpose from all sources;

(e) Shall, if the executive director so authorizes, make certifications on behalf of the executive director for the disbursement of funds available for vocational rehabilitation for individuals who are blind;

(f) Shall, with the approval of the executive director and the state board, take such other action as he or she deems necessary or appropriate to carry out the purposes of the Vocational Rehabilitation for the Blind Law;

(g) May, with the approval of the executive director and the state board, delegate to any officer or employee of the office such of his or her powers and duties, except the making of regulations and the making of recommendations for appointment of personnel, as he or she finds necessary to carry out the purposes of the Vocational Rehabilitation for the Blind Law;

(h) Shall, with the approval of the executive director and the state board, appoint committees to serve as the governing authority for independent living centers or other entities as required by federal law.

**HISTORY: Codes, 1942, § 6508.5-03; Laws, 1948, ch. 303, § 3; Laws, 1975, ch. 434, § 2; Laws, 1989, ch. 467, § 2; Laws, 1989, ch. 544, § 92; Laws, 1990, ch. 522, § 8; Laws, 1991, ch. 608, § 30, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 15, eff from and after July 1, 2002.**

**Cross References —** Executive director generally, see § 37-33-161.

Creation and organization of department of human services; executive director; see § 43-1-2.

Supervision by Vocational Rehabilitation for the Blind of the operation of vending facilities by blind persons, see § 43-3-93.

**Federal Aspects—** Federal Vocational Rehabilitational Act, see 29 USCS §§ 701 et seq.

## § 37-33-57. Acceptance and disposition of gifts and donations; annual report.

The director, with the approval of the executive director and the state board, may accept and use gifts and donations made unconditionally or otherwise for carrying out the purposes of the Vocational Rehabilitation for the Blind Law, from either public or private sources. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of that law may be so accepted and shall be held, invested, reinvested and used in accordance with the conditions of the gift. All monies received as gifts or donations, except conditional gifts requiring other treatment, shall be deposited in the State Treasury and shall constitute a permanent fund to be called the "Special Fund for the Vocational Rehabilitation" of Individuals who are Blind, and to be used by the state board for those purposes. The state board shall report annually to the State Legislature, setting forth the condition of vocational rehabilitation of individuals who are blind in Mississippi, the expenditures made from state and federal funds in carrying out the provisions of that law or its purpose, and a detailed statement of all gifts and donations offered and accepted, together with the names of donors and the respective amounts prescribed by each and all the disbursements made therefrom.

**HISTORY: Codes, 1942, § 6508.5-08; Laws, 1948, ch. 303, § 8; Laws, 1970, ch. 381, § 1; Laws, 1975, ch. 434, § 3; Laws, 1989, ch. 544, § 93; Laws, 1990, ch. 522, § 9; Laws, 1991, ch. 434, § 4; Laws, 1991, ch. 608, § 31, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 16, eff from and after July 1, 2002.**

**Cross References —** Powers and duties of the executive director of the State Department of Rehabilitation Services, see § 37-33-161.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-59. Duties of department.

The department shall provide vocational rehabilitation services to individuals who are blind who are determined by the department to be eligible therefor, and in carrying out the purposes of the Vocational Rehabilitation for the Blind Law, the department is authorized among other things:

(a) To cooperate with other departments, agencies and institutions, both public and private, in providing for the vocational rehabilitation of individuals who are blind, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of that law, such programs, facilities and services as may be necessary or desirable;

(b) To conduct research and compile statistics relating to the vocational rehabilitation of individuals who are blind;

(c) To prescribe and provide such courses of vocational training as may be necessary for the vocational rehabilitation of individuals who are blind.

**HISTORY: Codes, 1942, § 6508.5-04; Laws, 1948, ch. 303, § 4; Laws, 1975, ch. 434, § 4; Laws, 1989, ch. 544, § 94; Laws, 2002, ch. 463, § 17, eff from and after July 1, 2002.**

**Cross References —** Establishment and maintenance of vocation education department at state school for blind, see § 37-31-15.

Creation and organization of department of human services; executive director; see § 43-1-2.

Supervision by Vocational Rehabilitation for the Blind of the operation of vending facilities by blind persons, see § 43-3-93.

## § 37-33-61. Cooperation with federal government.

The department, through the office, shall cooperate, under agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation of individuals who are blind, and is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of those agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of those federal statutes and appropriations, to administer any legislation under those federal statutes and appropriations that is enacted by the State of Mississippi, to direct the disbursement and administer the use of all funds provided by the federal government or this state for the vocational rehabilitation of individuals who are blind in this state, and to do all things necessary to insure the vocational rehabilitation of individuals who are blind.

**HISTORY: Codes, 1942, § 6508.5-05; Laws, 1948, ch. 303, § 5; Laws, 1975, ch. 434, § 5; Laws, 1989, ch. 544, § 95; Laws, 1991, ch. 608, § 32, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 18, eff from and after July 1, 2002.**

**Cross References —** Transfer of functions, personnel, appropriations, etc., to Department of Rehabilitation Services, see § 37-33-201.

Creation and organization of department of human services; executive director; see § 43-1-2.

Duty of worker's compensation commission to cooperate with federal, state and local agencies in rehabilitation of handicapped workers, see § 71-3-105.

## § 37-33-63. Eligibility for vocational rehabilitation; services provided.

(1) Vocational rehabilitation services shall be provided to any individual who is blind, (i) who is a resident of the state at the time of filing his or her application therefor and whose vocational rehabilitation the director determines after full investigation can be satisfactorily achieved, or (ii) who is eligible therefor under the terms of an agreement with another state or with the federal government. Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the agency under that agreement, the following rehabilitation services shall be provided to blind individuals, utilizing available financial resources. These may include state, federal and/or personal funds. The services shall include:

(a) Physical restoration;

(b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) Occupational licenses;

(d) Placement equipment, tools and supplies;

(e) Maintenance;

(f) Training books and materials;

(g) Supported employment services, rehabilitation engineering services and independent living services.

(2) No person shall be determined ineligible because of financial status.

**HISTORY: Codes, 1942, § 6508.5-09; Laws, 1948, ch. 303, § 9; Laws, 1975, ch. 434, § 6; Laws, 1989, ch. 467, § 3; Laws, 2002, ch. 463, § 19, eff from and after July 1, 2002.**

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

Supervision by Vocational Rehabilitation for the Blind of the operation of vending facilities by blind persons, see § 43-3-93.

## § 37-33-65. Hearings.

Any individual applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the department shall be entitled, in accordance with regulations promulgated by the department, to a fair hearing.

**HISTORY: Codes, 1942, § 6508.5-11; Laws, 1948, ch. 303, § 11; Laws, 1975, ch. 434, § 7; Laws, 1989, ch. 467, § 4; Laws, 1989, ch. 544, § 96, eff from and after July 1, 1989.**

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-67. Maintenance; right not transferable or assignable; exempt from creditors' claims.

The right of an individual who is blind to maintenance under the Vocational Rehabilitation for the Blind Law shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors.

**HISTORY: Codes, 1942, § 6508.5-10; Laws, 1948, ch. 303, § 10; Laws, 1975, ch. 434, § 8, eff from and after passage (approved March 27, 1975); Laws, 2002, ch. 463, § 20, eff from and after July 1, 2002.**

**Cross References —** Right of eligible individuals with disabilities to maintenance not transferable or assignable and is exempt from creditors' claims, see § 37-33-27.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-69. Misuse of vocational rehabilitation lists and records; misdemeanor.

It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program for individuals who are blind, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning persons applying for or receiving vocational rehabilitation services, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties, except in response to summons, subpoena or other order of a court. Any violation of this section shall be a misdemeanor and punishable accordingly.

**HISTORY: Codes, 1942, § 6508.5-12; Laws, 1948, ch. 303, § 12; Laws, 2002, ch. 463, § 21, eff from and after July 1, 2002.**

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## § 37-33-71. Receipt and disbursement of vocational rehabilitation funds.

The State Treasurer is designated as the custodian of all funds received by the state from appropriations made by the Congress of the United States, or from other sources for the purpose of carrying out any state or federal statutes pertaining to vocational rehabilitation services for individuals who are blind. The State Treasurer is authorized to receive and provide for the proper custody of those funds, establish such special funds and accounts as may be necessary, and shall make disbursements from those funds and accounts for vocational rehabilitation purposes upon requisition by the executive director and upon the issuance of warrants by the State Fiscal Officer.

**HISTORY: Codes, 1942, § 6508.5-06; Laws, 1948, ch. 303, § 6; Laws, 1975, ch. 434, § 9; Laws, 1989, ch. 544, § 97; Laws, 2002, ch. 463, § 22, eff from and after July 1, 2002.**

**Editor's Notes —** Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

**Cross References —** Duties of state treasurer generally, see § 7-9-9.

Designation of state treasurer as sole agent to receive and disburse funds to be expended under direction of state officials and agencies for benefit of state, see § 7-9-23.

Designation of state treasurer as custodian of federal moneys received under Smith-Hughes Act, see § 37-31-9.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-73. Appropriations.

Budget estimates of the amount of appropriations needed each fiscal year for vocational rehabilitation services for the blind and for the administration of said program shall be submitted in such manner as may be provided by law, and sufficient funds for the purpose of carrying out the provisions of the Vocational Rehabilitation for the Blind Law shall be appropriated by the Legislature. In the event federal funds are available to the State of Mississippi for vocational rehabilitation purposes, the department is authorized to comply with such requirements as may be necessary to obtain said federal funds in the maximum amount and most advantageous proportion possible insofar as this may be done without violating other provisions of the state law and constitution. In the event the national Congress fails in any year to appropriate funds for grants-in-aid to the state for vocational rehabilitation purposes, the State Legislature shall appropriate such funds as may be necessary to carry out the provisions of said law.

**HISTORY: Codes, 1942, § 6508.5-07; Laws, 1948, ch. 303, § 7; Laws, 1975, ch. 434, § 10; Laws, 1989, ch. 544, § 98, eff from and after July 1, 1989.**

**Cross References —** Appropriation of moneys for vocational education to match federal appropriations under Smith-Hughes Act, see § 37-31-11.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-75. Saving clause.

The legislature reserves the right to amend or repeal all or any part of the Vocational Rehabilitation for the Blind Law at any time, and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by said law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal said law at any time.

**HISTORY: Codes, 1942, § 6508.5-14; Laws, 1948, ch. 303, § 14; Laws, 1975, ch. 434, § 11, eff from and after passage (approved March 27, 1975).**

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

# PROGRAMS OF SERVICES FOR HEARING-IMPAIRED STUDENTS

Sec.
37-33-81. Contracts for implementation and maintenance of programs of services for hearing-impaired students; appropriations.

## § 37-33-81. Contracts for implementation and maintenance of programs of services for hearing-impaired students; appropriations.

(1) The Office of Vocational Rehabilitation of the State Department of Rehabilitation Services may enter into contracts with appropriate post-secondary educational institutions in the state for the purpose of implementing and maintaining programs of services for hearing-impaired students.

(2) Those programs shall be funded from funds appropriated to the office by the Legislature or from any other resource identified and accessed by the office. The office shall continue to administer those programs for each year deemed suitable by the office.

**HISTORY: Laws, 1987, ch. 342; Laws, 1989, ch. 544, § 72; Laws, 1991, ch. 608, § 7, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 11, eff from and after July 1, 2002.**

**Cross References** — Education of exceptional children generally, see § 37-23-1 et seq.

State Department of Rehabilitation Services generally, see § 37-33-151 et seq.

Office of Vocational Rehabilitation, see § 37-33-153.

Creation and organization of department of human services; executive director; see § 43-1-2.

Schools for the blind and deaf generally, see §§ 43-5-1 et seq.

### RESEARCH REFERENCES

**ALR.**

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Discrimination actions, under 42 USCS § 1983, for violations of federal statutes pertaining to rights of handicapped persons. 63 A.L.R. Fed. 215.

What services must federally assisted school provide for handicapped children under Education of the Handicapped Act (20 USCS §§ 1401 et seq). 63 A.L.R. Fed. 856.

## REHABILITATION SERVICES TO ENABLE DISABLED PERSONS TO ATTAIN INDEPENDENT LIVING [REPEALED]

Sec.
37-33-91 through 37-33-95. Repealed.

### §§ 37-33-91 through 37-33-95. Repealed.

Repealed by Laws, 2002, ch. § 50, eff from and after July 1, 2002.

§ 37-33-91. [Codes, 1942, § 6504.9; Laws, 1962, ch. 377; Laws, 1983, ch. 521, § 12; Laws, 1989, ch. 544; § 73; Laws, 1991, ch. 608, § 8, eff from and after July 1, 1991 (became law without the Governor's signature).]

§ 37-33-93. [Laws, 1985, ch. 472, § 1; Laws, 1986, ch. 494, § 1; reenacted, Laws, 1987, ch. 370; § 1; Laws, 1989, ch. 544, § 74, Laws, 1989, ch. 579, § 1, eff from and after July 1, 1989.]

§ 37-33-95. [Laws, 1985, ch. 472, § 3; reenacted, Laws, 1987, ch. 370; § 2; Laws, 1989, ch. 544, § 75, Laws, 1990, ch. 522, § 10, Laws, 1991, ch. 608, § 9, eff from and after July 1, 1991 (became law without the Governor's signature).]

**Editor's Notes** — Former § 37-33-91 provided for rehabilitation services to enable disabled persons to attain independent living.

Former § 37-33-93 provided for the establishment by the Independent Living Center of attendant care program for severely, physically disabled persons.

Former § 37-33-95 provided for the promulgation of rules and regulations necessary for the proper administration of the attendant care program.

## SHELTERED WORKSHOPS

Sec.

37-33-101. Establishment and operation of community rehabilitation programs authorized.
37-33-103. Powers of Executive Director of Department of Rehabilitation Services.
37-33-105. Disposition of funds received; expenditures from special fund; application for, acceptance and use of gifts, grants or other property.
37-33-107. Counties and municipalities may support community rehabilitation programs.

### § 37-33-101. Establishment and operation of community rehabilitation programs authorized.

In addition to the authority now vested in the State Department of Rehabilitation Services, it may establish and operate by any means, including incorporation under the nonprofit laws of this state, a system of community rehabilitation programs in the several counties of the state for the general purposes of training, rehabilitating, retraining and developing individuals with disabilities to become more productive citizens, including, but not limited to training and job coaching, in order to obtain the maximum degree of independent living.

**HISTORY: Codes, 1942, § 6504.11; Laws, 1966, ch. 429, § 1; Laws, 1970, ch. 379, § 1; Laws, 1983, ch. 521, § 13; Laws, 1989, ch. 544, § 76; Laws, 1991, ch. 608, § 10, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 28, eff from and after July 1, 2002.**

**Cross References** — State Department of Rehabilitation Services generally, see § 37-33-151 et seq.

Creation and organization of department of human services; executive director; see § 43-1-2.

### § 37-33-103. Powers of Executive Director of Department of Rehabilitation Services.

The Executive Director of the State Department of Rehabilitation Services, through the Director of the Office of Vocational Rehabilitation, may, within budgetary limitations, purchase and operate motor vehicles for the purpose of transporting material, products and clients, and may employ program coordinating, supervising, support and production personnel to properly effectuate the purposes for which community rehabilitation programs are established under Section 37-33-101. The director may designate a member of his or her staff to execute and enter into, on behalf of the office, contracts and subcontracts with any industry, manufacturer or other party for the production and the manufacture of goods or provision of services in the community rehabilitation program; however, the director must approve the general terms and conditions thereof. The director may authorize community rehabilitation programs to manufacture items and/or provide services for sale to jobbers or directly to the general public.

**HISTORY: Codes, 1942, § 6504.11; Laws, 1966, ch. 429, § 1; Laws, 1970, ch. 379, § 1; Laws, 1983, ch. 521, § 14; Laws, 1989, ch. 544, § 77; Laws, 1991, ch. 608, § 11, eff from and after July 1, 1991, (became law without the Governor's signature); Laws, 2002, ch. 463, § 29, eff from and after July 1, 2002.**

**Cross References** — State Department of Rehabilitation Services generally, see § 37-33-151 et seq.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-105. Disposition of funds received; expenditures from special fund; application for, acceptance and use of gifts, grants or other property.

All proceeds from community rehabilitation program contracts or other funds paid for services, fees or items sold shall be deposited in a special fund in an established local county or central state depository and shall be subject to audit by the State Auditor. All expenditures from the special fund shall be made on the signatures of the community rehabilitation program staff as designated by the Director of the Office of Vocational Rehabilitation. The earnings of all client-trainee persons and all production personnel shall be paid from that fund. Instructor-supervisors and support personnel may be paid in whole or in part from that fund. The director, on behalf of the State Department of Rehabilitation Services, is authorized to apply for and accept gifts, grants or other personal or real property to be used for the purposes of Section 37-33-101.

**HISTORY: Codes, 1942, § 6504.11; Laws, 1966, ch. 429, § 1; Laws, 1970, ch. 379, § 1; Laws, 1983, ch. 521, § 15; Laws, 1989, ch. 544, § 78; Laws, 1991, ch. 608, § 12, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 30, eff from and after July 1, 2002.**

**Editor's Notes** — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

**Cross References** — Director of Office of Vocational Rehabilitation generally, see § 37-33-15.

State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-107. Counties and municipalities may support community rehabilitation programs.

The board of supervisors and the governing authorities of municipalities may, in their discretion, make reasonable appropriations from the general fund of the municipality or county for the support of community rehabilitation programs established by Section 37-33-101, to train, rehabilitate, retrain, and develop more productive lives for individuals with disabilities within the respective counties.

**HISTORY: Codes, 1942, § 6504.13; Laws, 1968, ch. 424, § 1; Laws, 2002, ch. 463, § 31, eff from and after July 1, 2002.**

## FUNDING OF REHABILITATION SERVICES FOR THE SEVERELY DISABLED

Sec.
37-33-121. Declaration of purpose.
37-33-123. Community rehabilitation program defined.
37-33-125. Receipt of funds by Office of Vocational Rehabilitation.
37-33-127. Applications for assistance in maintaining community rehabilitation programs; expenditure of general funds; acceptance of gifts or grants; matching of federal funds.
37-33-129. Community rehabilitation program board of directors.
37-33-131. Powers of Director of Office of Vocational Rehabilitation as to grants for community rehabilitation programs; promulgation of rules and regulations.
37-33-133. Disposition of funds obtained from manufacture of goods; disposition of nonappropriated funds generated by community rehabilitation program facilities.

### § 37-33-121. Declaration of purpose.

The purpose of Sections 37-33-121 through 37-33-131 is to improve rehabilitation services for severely disabled individuals in Mississippi by providing for the development and continuation of community rehabilitation programs.

**HISTORY: Laws, 1975, ch. 509, § 1; Laws, 2002, ch. 463, § 32, eff from and after July 1, 2002.**

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

### § 37-33-123. Community rehabilitation program defined.

For the purposes of Sections 37-33-121 through 37-33-131, a community rehabilitation program means a program that provides directly or facilitates the provision of services to individuals with disabilities to enable them to maximize their opportunities for employment. These specialized programs provide paid, time-limited work experiences to clients with disabilities through the manufacture of goods or provision of services sold to industry or other parties as the primary means in rendering realistic work based evaluation and training services designed to enable clients with disabilities to attain the necessary work skills, habits, behaviors, and experience required to successfully obtain and maintain competitive employment. Additional services provided by the community rehabilitation program to enhance and facilitate the employability of clients with disabilities include, but are not limited to, vocational evaluation/career exploration and planning, counseling and guidance, job readiness and job seeking skills training, on the job evaluation and other therapeutic or work training services that support or contribute to the ultimate employment of clients with disabilities.

**HISTORY: Laws, 1975, ch. 509, § 2; Laws, 2002, ch. 463, § 33, eff from and after July 1, 2002.**

**Cross References —** Creation and organization of department of human services; executive director; see § 43-1-2.

## § 37-33-125. Receipt of funds by Office of Vocational Rehabilitation.

Funds for the purpose of providing grants to assist in the establishing and operating of community rehabilitation programs for severely disabled individuals may be received by the Office of Vocational Rehabilitation, State Department of Rehabilitation Services from appropriations by the Legislature, from grants from other state agencies, departments, divisions, commissions and boards having funds available for this purpose, and from the federal government. The Office of Vocational Rehabilitation, State Department of Rehabilitation Services, shall promulgate and publish rules and regulations that shall govern the distribution of those grants and the matching basis incumbent thereto.

**HISTORY: Laws, 1975, ch. 509, § 3; Laws, 1983, ch. 521, § 16; Laws, 2002, ch. 463, § 34, eff from and after July 1, 2002.**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Creation and organization of department of human services and its executive director, see § 43-1-2.

## § 37-33-127. Applications for assistance in maintaining community rehabilitation programs; expenditure of general funds; acceptance of gifts or grants; matching of federal funds.

(1) Any city, county, nonprofit corporation, state-supported institution, or any combination thereof, may apply to the Director of the Office of Vocational Rehabilitation of the State Department of Rehabilitation Services for assistance in establishing or operating, or both establishing and operating, a community rehabilitation program. Applications for that assistance shall be on forms supplied by the Office of Vocational Rehabilitation. Each applicant shall annually submit to the Director of the Office of Vocational Rehabilitation its

plan and budget for the next fiscal year. No applicant shall be eligible for a grant under this section unless its plan and budget have been approved by the director.

(2) In order to provide the necessary funds for a community rehabilitation program, the governing body of any city or county may expend any money in the general fund of the city or county for that purpose. Any city, county, nonprofit corporation and state-supported institution may accept gifts or grants from any source for the community rehabilitation program. Any money received as a gift or nonfederal grant may be used to match federal funds.

**HISTORY: Laws, 1975, ch. 509, § 4; Laws, 1983, ch. 521, § 17; Laws, 1989, ch. 544, § 79; Laws, 1991, ch. 608, § 13, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 35, eff from and after July 1, 2002.**

**Cross References —** Director of Office of Vocational Rehabilitation generally, see § 37-33-15.

State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Creation and organization of department of human services and its executive director, see § 43-1-2.

## § 37-33-129. Community rehabilitation program board of directors.

(1) Every city, county, nonprofit corporation, state-supported institution, or combination thereof establishing a community rehabilitation program shall appoint a community rehabilitation program board of directors of not less than nine (9) members before becoming eligible for the assistance provided by Sections 37-33-121 through 37-33-131. When any city or county singly establishes such a community rehabilitation program, the board shall be appointed by the governing authorities of the city or county. When any combination of cities, counties, state-supported institutions, or nonprofit corporations establishes such a community rehabilitation program, the governing authorities of the county, city, or nonprofit corporations and directors of state-supported institutions shall appoint the board. If a nonprofit corporation singly establishes such a community rehabilitation program, the corporation shall appoint the board of directors. Membership on a board shall be representative of the community served and shall include an individual with a disability. One-third (⅓) to one-half (½) of the board shall be representative of lay associations for individuals with disabilities, labor, the general public and education, welfare, medical and health professions. Nothing in Sections 37-33-121 through 37-33-131 shall be construed to preclude the appointment of elected or appointed public officials or members of the board of directors of the sponsoring nonprofit corporation to the board, so long as representation described above is preserved.

(2) The term of office of each member of the community rehabilitation program board shall be for four (4) years, measured from the first day of the year of appointment, except as follows: Of the members first appointed, at least

three (3) shall be appointed for a term of two (2) years, at least three (3) for a term of three (3) years, and at least three (3) for a term of four (4) years. Vacancies shall be filled for the unexpired term in the same manner as original appointments. Any member of a board may be removed by the appointing authority for neglect of duty, misconduct, or malfeasance in office, after being given written statement of charges and an opportunity to be heard on the charges.

(3) Subject to the provisions of Sections 37-33-121 through 37-33-131 and the rules and regulations of the Office of Vocational Rehabilitation of the State Department of Rehabilitation Services, each community rehabilitation program board shall:

(a) Review and evaluate the need for a community rehabilitation program provided by Sections 37-33-121 through 37-33-131 and report thereon to the Director of the Office of Vocational Rehabilitation, the administrator of the local program, and, when indicated, the public, together with recommendations for additional services and facilities;

(b) Recruit and promote local financial support for the program from private sources such as united funds, business, industrial and private foundations, voluntary agencies and other lawful sources and promote public support for municipal and county appropriations;

(c) Promote, arrange and implement working agreements with other educational and social service agencies both public and private and any other allied agencies;

(d) Advise the local administrator of the community rehabilitation program on the adoption and implementation of policies to stimulate effective community relations;

(e) Review the annual plan and budget and make recommendations thereon;

(f) When so determined by the authority establishing the program, act as the local administrator of the program.

**HISTORY: Laws, 1975, ch. 509, § 5; Laws, 1983, ch. 521, § 18; Laws, 1989, ch. 544, § 80; Laws, 1990, ch. 522, § 11; Laws, 1991, ch. 608, § 14, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 36, eff from and after July 1, 2002.**

**Cross References —** Director of Office of Vocational Rehabilitation generally, see § 37-33-15.

State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Creation and organization of department of human services and its executive director, see § 43-1-2.

## § 37-33-131. Powers of Director of Office of Vocational Rehabilitation as to grants for community rehabilitation programs; promulgation of rules and regulations.

(1) The Director of the Office of Vocational Rehabilitation, on behalf of the State Department of Rehabilitation Services, may make grants to assist cities,

counties, nonprofit corporations and state-supported institutions, or any combination thereof in the establishment, operation and expansion of community rehabilitation programs. The director may accept federal grants or aids on behalf of the State Department of Rehabilitation Services and shall cooperate with federal agencies in any reasonable manner necessary to qualify for those federal grants or aids for community rehabilitation programs.

(2) At the beginning of each fiscal year, the director shall allocate funds, as available for this program, to community rehabilitation programs for disbursement during the fiscal year in accordance with their approved plans or budgets. The director shall from time to time during the fiscal year review the budgets and expenditures of the various programs.

(3) The Director of the Office of Vocational Rehabilitation, with the approval of the Executive Director of the State Department of Rehabilitation Services, shall have the authority to promulgate rules and regulations in regard to the following matters:

(a) State certification of all community rehabilitation programs;

(b) Eligibility of community rehabilitation programs to receive state grants or be designated as a qualified provider of community rehabilitation program services;

(c) Standards for qualification of personnel, salary schedule, quality of professional service, in-service training and educational leave programs for personnel;

(d) Regulatory fees for consultation services;

(e) Standards as to types and kinds of severely disabled individuals eligible for those services; and

(f) Such other rules and regulations as he or she deems necessary to carry out the purposes of Sections 37-33-121 through 37-33-131.

**HISTORY: Laws, 1975, ch. 509, § 6; Laws, 1983, ch. 521, § 19; Laws, 1989, ch. 544, § 81; Laws, 1990, ch. 522, § 12; Laws, 1991, ch. 608, § 15, eff from and after July 1, 1991, (became law without the Governor's signature); Laws, 2002, ch. 463, § 37, eff from and after July 1, 2002.**

**Cross References** — Director of Office of Vocational Rehabilitation generally, see § 37-33-15.

State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Creation and organization of department of human services and its executive director, see § 43-1-2.

## § 37-33-133. Disposition of funds obtained from manufacture of goods; disposition of nonappropriated funds generated by community rehabilitation program facilities.

Any funds obtained by the State Department of Rehabilitation Services as a result of the manufacture of goods shall be used and accounted for separately from any funds received by the department through appropriations from the Legislature. All nonappropriated funds generated by community rehabilitation program facilities shall not be subject to appropriation by the Legislature, but must be used in accordance with the federal regulations set forth by The Rehabilitation Act of 1973, as amended.

**HISTORY: Laws, 1991, ch. 608, § 16, eff from and after July 1, 1991(became law without the Governor's signature); Laws, 2002, ch. 463, § 38, eff from and after July 1, 2002.**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

## STATE DEPARTMENT OF REHABILITATION SERVICES

Sec.

37-33-151. Definitions.
37-33-152. Declaration of state policy.
37-33-153. State Department of Rehabilitation Services created; organization of department.
37-33-155. State Board of Rehabilitation Services.
37-33-157. General powers and duties of Department of Rehabilitation Services.
37-33-159. Appointment, term of office and compensation of Executive Director of Department of Rehabilitation Services.
37-33-161. Powers and duties of executive director.
37-33-162. Subrogation of department as to proceeds owing to client from claim for which assistance is provided; rights and duties of client; conduct and disposition of claim; double assessment for failure to honor subrogation rights.
37-33-163. Administration of Office of Disability Determination Services; general powers and duties of executive director.
37-33-165. Powers and duties of Office of Disability Determination Services regarding Social Security Disability Benefits and Supplemental Security Income.
37-33-167. Authority of Office of Disability Determination Services regarding medical assistance eligibility determinations for certain persons.
37-33-169. Duties of state treasurer with respect to funds for carrying out disability determination functions under Social Security Act; effect of cessation of federal funding on state's obligation to continue programs.
37-33-171. Powers and duties of Office on the Deaf and Hard of Hearing.
37-33-173. Providers of interpreting services for a fee to deaf and hearing impaired required to register with Office on Deaf and Hard of Hearing; standards for registration; appointment of advisory council for development of program rules; confidentiality; penalties.

### § 37-33-151. Definitions.

The following terms shall have the meanings ascribed herein, unless the context shall otherwise require:

(a) "Board" means the State Board of Rehabilitation Services.

(b) "Executive Director" means the Executive Director of the State Department of Rehabilitation Services.

(c) "Department" means the State Department of Rehabilitation Services.

(d) "Director" means the administrative head of an office.

(e) "Office" means an administrative subdivision of the department.

**HISTORY: Laws, 1983, ch. 521, § 2; Laws, 1989, ch. 544, § 82; Laws, 1990, ch. 522, § 13; Laws, 1991, ch. 608, § 17, eff from and after July 1, 1991, (became law without the Governor's signature).**

**Editor's Notes —** Section 1, ch. 521, Laws of 1983, effective from and after July 1, 1983, provides as follows:

"SECTION 1. It is hereby declared to be the policy of this state to provide rehabilitation services, to the extent needed and feasible within resources available, to eligible disabled and/or handicapped individuals throughout the state, to the end that they may engage in useful and remunerative occupations to the extent of their capabilities, thereby increasing their social and economic well-being and that of their families, and the productive capacity of this state and nation, also thereby reducing the burden of dependency on families and taxpayers."

**Cross References —** Transfer to State Department of Rehabilitation Services of powers, duties, etc. of Division of Rehabilitation Services and Division of Vocational Rehabilitation for the Blind of the Department of Human Services, see § 37-33-201.

### RESEARCH REFERENCES

**Practice References.**

Education Law (Matthew Bender).

## § 37-33-152. Declaration of state policy.

It is declared to be the policy of this state to provide rehabilitation services, to the extent needed and feasible within resources available, to eligible individuals with disabilities throughout the state, to the end that they may engage in useful and remunerative occupations and live independently to the extent of their capabilities, thereby increasing their social and economic well-being and that of their families, and the productive capacity of this state and nation, also thereby reducing the burden of dependency on families and taxpayers.

**HISTORY: Laws, 1983, ch. 521, § 1; Laws, 1991, ch. 608, § 2, eff from and after July 1, 1991 (became law without the Governor's signature); Laws, 2002, ch. 463, § 12, eff from and after July 1, 2002.**

**Cross References —** Administration of Office of Vocational Rehabilitation, see § 37-33-15.

## § 37-33-153. State Department of Rehabilitation Services created; organization of department.

In order to provide for rehabilitation, habilitation and other services to eligible individuals with disabilities, their families and the community, there is created the State Department of Rehabilitation Services. The department shall be composed of the following offices:

(a) The Office of Vocational Rehabilitation;
(b) The Office of Disability Determination Services;
(c) The Office of Special Disability Programs; and

(d) The Office of Vocational Rehabilitation for the Blind.

**HISTORY: Laws, 1983, ch. 521, § 3; Laws, 1989, ch. 544, § 68; Laws, 1991, ch. 608, § 18; Laws, 1999, ch. 320, § 1; Laws, 2002, ch. 463, § 13, eff from and after July 1, 2002.**

**Cross References** — General provisions regarding reorganization of executive branch, see § 7-17-1 et seq.

Office of Vocational Rehabilitation generally, see § 37-33-15.

Office of Vocational Rehabilitation for the Blind generally, see § 37-33-54.

Office of Disability Determination Services generally, see §§ 37-33-163 through 37-33-167.

Transfer of powers, functions, records, personnel, etc., to department, see § 37-33-201.

Appointment, powers, and duties of Director of Office of Special Disability Programs, see § 37-33-207.

Department of Human Services, see § 43-1-2.

## § 37-33-155. State Board of Rehabilitation Services.

(1) There is created the State Board of Rehabilitation Services, which shall consist of two (2) appointed members and the following five (5) officials: the Executive Officer of the State Department of Health; the Executive Director of the State Department of Mental Health; the State Superintendent of Public Education, or his designee; the Director of the Division of Vocational and Technical Education of the State Department of Education; and the Executive Director of the Department of Human Services.

Of the two (2) appointed members, one (1) shall be either an individual who is a client of vocational rehabilitation services or a parent of an individual who is a client of vocational rehabilitation services, and the other shall be either an individual who is visually impaired or a parent of an individual who is visually impaired. The appointed members shall be appointed by the Governor from the state at large, with one (1) appointed for a term to expire on July 1, 1994, and the other appointed for a term to expire on July 1, 1996. Upon the expiration of the initial terms, the members shall be appointed for terms of five (5) years from the expiration date of the previous term. All original and subsequent appointments shall be with the advice and consent of the Senate. An appointment to fill a vacancy, other than by expiration of a term of office, shall be made for the balance of the unexpired term. No board appointee shall be an employee or elected official of the State of Mississippi or a political subdivision thereof, or an employee of the former State Department of Rehabilitation Services before July 1, 1989, or an employee of the Division of Rehabilitation Services of the Department of Human Services or any subordinate administrative unit of the division before July 1, 1991, or an employee of the State Department of Rehabilitation Services after June 30, 1991.

(2) The board shall elect a chairperson from its membership at the first meeting of the original board members and every two (2) years thereafter on July 15 of the year. A majority of the membership of the board shall constitute a quorum for the transaction of any business, and the board shall meet at least

quarterly and hold other meetings as are necessary for the purpose of conducting required business. All meetings of the board shall be called by the chairperson, except the first meeting of the original board members, which shall be called by the Governor.

(3) The appointed members of the board shall be compensated at a per diem rate as authorized by Section 25-3-69, plus actual and necessary expenses as authorized by Section 25-3-41. Members of the board appointed before July 1, 1991, shall be paid compensation and expenses under this subsection from funds available to the Division of Rehabilitation Services of the Department of Human Services.

**HISTORY: Laws, 1983, ch. 521, § 4; repealed, Laws, 1989, ch. 544, § 89; reenacted and amended, Laws, 1991, ch. 608, § 19; Laws, 1993, ch. 602, § 10, eff from and after July 1, 1993.**

**Cross References** — Transfer to State Department of Rehabilitation Services of powers, duties, etc. of Division of Rehabilitation Services and Division of Vocational Rehabilitation for the Blind of the Department of Human Services, see § 37-33-201.

Mississippi Industries for the Blind (MIB) to be governed by State Board of Rehabilitation Services, see § 43-3-103.

## § 37-33-157. General powers and duties of Department of Rehabilitation Services.

The Department of Rehabilitation Services shall provide the rehabilitation services authorized by law and by the rules, regulations and policies of the board to every individual determined to be eligible therefor, and in carrying out the purposes of this chapter the department is authorized, when consistent with the rules, regulations and policies of the State Board of Rehabilitation Services:

(a) To expend funds received either by appropriation or directly from federal or private sources.

(b) To cooperate with other departments, agencies and institutions, both public and private, in providing the services authorized by this chapter to disabled individuals, in studying the problems involved therein, and in establishing, developing and providing in conformity with the purposes of this chapter, such programs, facilities and services as may be necessary or desirable.

(c) To enter into reciprocal agreements with other states to provide for the services authorized by this chapter to residents of the states concerned.

(d) To conduct research and compile statistics relating to the provision of services to or the need of services by disabled individuals.

(e) To enter into contractual arrangements with the federal government and with other authorized public agencies or persons for performance of services related to rehabilitation.

(f) To contract with schools, hospitals and other agencies, and with doctors, optometrists, nurses, technicians and other persons, for training, physical restoration, transportation and other rehabilitation services.

(g) To take such action as may be necessary to enable the department to apply for, accept and receive for the state and its residents the full benefits available under the federal Vocational Rehabilitation Act, and any amendments thereto, and under any other federal legislation or program having as its purpose the providing of, improvement or extension of, vocational rehabilitation services.

(h) To establish an Office on the Deaf and Hard of Hearing to provide services and activities authorized under Section 37-33-171.

(i) To own in the name of the State of Mississippi certain real property described in Section 7 of Chapter 512, Laws of 2005, and to construct, renovate or repair under the supervision of the Department of Finance and Administration any buildings on such property.

(j) To borrow money from the Mississippi Development Bank or other financial institution for the purpose of construction, repair and renovation, furnishing or equipping facilities owned or under the supervision of the department; however, the department shall certify the following to the Mississippi Development Bank or other financial institution prior to entering into any loan:

(i) The available revenue that the department intends to utilize to repay the loan; and

(ii) That the department does not intend to request an additional appropriation from state source funding to pay debt service on any loan entered into under this paragraph.

(k) To fingerprint and perform a current criminal history record check, child abuse registry check, sex offender registry check, and vulnerable adult abuse or neglect check on any person performing services for or on behalf of the department including, but not limited to, every employee, volunteer, contractual worker, and independent contractor.

(*l*) To use the results of the fingerprinting and background checks performed under paragraph (k) for the purposes of employment decisions and/or actions and service provision to consumers of the department's services. The department and its agents, officers, employees, attorneys and representatives shall be exempt from liability for any findings, recommendations or actions taken under this paragraph.

**HISTORY: Laws, 1983, ch. 521, § 5; Laws, 1989, ch. 544, § 88; Laws, 1990, ch. 522, § 14; Laws, 1991, ch. 608, § 20; Laws, 2005, ch. 512, § 6; Laws, 2010, ch. 473, § 1; Laws, 2011, ch. 308, § 1, eff from and after July 1, 2011.**

**Joint Legislative Committee Note** — Subsection (i) of this section contained an incorrect reference to "Section 6 of Chapter 512, Laws of 2005." In 2007, the reference was changed to "Section 7 of Chapter 512, Laws of 2005" at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The correction was ratified by the Joint Committee, pursuant to Section 1-1-109, at the Committee's August 5, 2008, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in paragraph (*l*) by substituting "background checks performed under paragraph (k)" for "background checks performed under paragraph (j)." The Joint Committee ratified the correction at its July 13, 2011, meeting.

**Cross References —** Transfer of functions, personnel, appropriations, etc., to department, see § 37-33-201.

Direction that no program of the department shall be classified as prison industry, see § 47-5-537.

**Federal Aspects—** Federal Vocational Rehabilitation Act, 29 USCS §§ 701 et seq.

## § 37-33-159. Appointment, term of office and compensation of Executive Director of Department of Rehabilitation Services.

The State Board of Rehabilitation Services shall appoint an Executive Director of the State Department of Rehabilitation Services, in accordance with standards established by the State Personnel Board and on the basis of his education, training, experience and demonstrated ability. The executive director shall serve as secretary and executive officer of the board, and he shall serve at the will and pleasure of the board. The salary of the executive director shall be set by the board, subject to the approval of the State Personnel Board, and shall be provided for out of any funds made available for such purpose by the Legislature, the federal government or other gifts or grants. The executive director shall be responsible to the board for the proper administration of the programs of rehabilitation provided under this chapter in conformity with the policies adopted by the board and shall be responsible for appointing directors of offices and any necessary supervisors, assistants and employees. The salary and compensation of such employees shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq.

**HISTORY: Laws, 1991, ch. 608, § 21, eff from and after July 1, 1991, (became law without the Governor's signature).**

**Editor's Notes —** A former § 37-33-159 [Laws of 1983, ch. 521, § 6; 1988, ch. 313], which provided for the appointment of a commissioner of rehabilitation services, was repealed by Laws of 1989, ch. 544, § 89, eff from and after July 1, 1989.

## § 37-33-161. Powers and duties of executive director.

In carrying out his duties under this chapter, the Executive Director of the State Department of Rehabilitation Services:

(a) Shall, with the approval of the board, promulgate regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility and investigation and determination therefor, for vocational rehabilitation and other rehabilitation services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of this chapter and in conformity with federal law;

(b) Shall, with the approval of the board, establish appropriate subordinate administrative units within the department;

(c) Shall prepare and submit to the board and the Legislature annual reports of activities and expenditures and, before each regular session of the Legislature, coordinate budget requests required for carrying out this chapter and estimates of the amounts to be made available for this purpose from all sources;

(d) Shall be empowered to exercise executive and administrative supervision over all institutions, offices, programs and services now existing or hereafter acquired or created under the jurisdiction of the department;

(e) Shall make certification for disbursement, in accordance with regulations, of funds available, for implementing the purposes of this chapter;

(f) Shall, with the approval of the board, take such other action as he deems necessary or appropriate to effectuate the purposes of this chapter;

(g) May, with the approval of the board, delegate to any officer or employee of the department such of his powers and duties as he finds necessary to effectuate the purposes of this chapter.

**HISTORY: Laws, 1983, ch. 521, § 7; Laws, 1989, ch. 544, § 83; Laws, 1990, ch. 522, § 15; Laws, 1991, ch. 608, § 22, eff from and after July 1, 1991, (became law without the Governor's signature).**

### OPINIONS OF THE ATTORNEY GENERAL

State Board of Human Services may establish for Department of Human Services policies pertaining to private practice of law by department attorneys. Hathorn, March 20, 1992, A.G. Op. #92-0147.

## § 37-33-162. Subrogation of department as to proceeds owing to client from claim for which assistance is provided; rights and duties of client; conduct and disposition of claim; double assessment for failure to honor subrogation rights.

(1) If medical or rehabilitation assistance is provided to a client under this article for injury, loss or damage caused under circumstances creating a cause of action in favor of the client against any person, firm or corporation, then the department shall be entitled to recover the proceeds that may result from the exercise of any rights of recovery which the client may have against any such person, firm or corporation to the extent of the actual amount of the medical or rehabilitation assistance made by the department on behalf of the client. The client shall execute and deliver instruments and papers to do whatever is necessary to secure such rights and shall do nothing after said medical and/or rehabilitation assistance is provided to prejudice the subrogation rights of the department.

Pursuant to Section 31-19-29, Mississippi Code of 1972, the department may compromise or settle any such claim and execute a release of any claim it has by virtue of this section.

(2) The acceptance of medical and/or rehabilitation assistance under this article or the making of a claim thereunder shall not affect the right of client

or his legal representative to recover the medical and/or rehabilitation payments made by the department as an element of damages in any action at law; provided, however, that a copy of the pleadings shall be certified to the department at the time of the institution of suit, and proof of such notice shall be filed of record in such action. The department may, at any time before the trial on the facts, join in such action or may intervene therein. Any amount recovered by a client or his legal representative shall be applied as follows:

(a) The reasonable costs of the collection, including attorney's fees, as approved and allowed by the court in which such action is pending, or in case of settlement without suit, by the legal representative of the department;

(b) The actual amount of the medical and/or rehabilitation payments made by the department on behalf of the client; or such pro rata amount as may be arrived at by compromise settlement pursuant to Section 37-33-162(1), or as set by the court having jurisdiction; and

(c) Any excess shall be awarded to the client.

(3) No compromise of any claim by the client or his legal representative shall be binding upon or affect the rights of the department against the third party unless, pursuant to Section 37-33-162(1), the department has entered into the compromise. Any compromise effected by the client or his legal representative with the third party in the absence of advance notification to and approved by the department shall constitute conclusive evidence of the liability of the third party, and the department, in litigating its claim against said third party, shall be required only to prove the amount and correctness of its claim relating to such injury, loss or damage. It is further provided that should the client or his legal representative fail to notify the department of the institution of legal proceedings against a third party for which the department has a cause of action, the facts relating to negligence and the liability of the third party, if judgment is rendered for the client, shall constitute conclusive evidence of liability in a subsequent action maintained by the department and only the amount and correctness of the department's claim relating to injury, loss or damage shall be tried before the court. The department shall be authorized in bringing such action against the third party and his insurer jointly or against the insurer alone.

(4) By accepting medical and/or rehabilitation payments from the department, the client shall, to the extent of the payment of medical expenses by the department, be deemed to have made an assignment to the department of any and all rights and interests in any third-party benefits, hospitalization or indemnity contract or any cause of action, past, present or future, against any person, firm or corporation for benefits provided to the client by the department for loss, injury or damage caused or suffered under circumstances creating a cause of action in favor of the client against such person, firm or corporation as set out in Section 37-33-162(1).

(5) Nothing herein shall be construed to diminish or otherwise restrict the subrogation rights of the department against a third party for medical and/or rehabilitation payment paid by the department in behalf of the client as a result of injury, loss or damage caused under circumstances creating a cause of action in favor of the client against such a third party.

(6) Any person, firm or corporation who fails or refuses to honor the subrogation rights of the department and specifically, without limitation, hospital insurance and indemnity benefits accruing to a client, shall be subject, should suit become necessary and liability be established, to an assessment of double the amount of medical/rehabilitation payments paid by the department, or double the amount of the insurance policy limits, whichever is the lesser, inclusive of the assessment of a reasonable attorney's fee and all costs of court.

**HISTORY: Laws, 1993, ch. 371, § 1, eff from and after July 1, 1993.**

### RESEARCH REFERENCES

**ALR.**

Right of one who pays medical or similar expenses of injured person under life care, or similar, contract to recover the cost thereof from tortfeasor. 78 A.L.R.2d 822.

Right of "Blue Cross" or "Blue Shield," or similar hospital or medical service organization, to be subrogated to certificate holder's claims against tortfeasor. 73 A.L.R.3d 1140.

Validity and construction of Medical Care Recovery Act (42 USCS §§ 2651-2653), dealing with third-party liability for hospital and medical care furnished by United States. 7 A.L.R. Fed. 289.

**Am. Jur.**

70B Am. Jur. 2d, Social Security and Medicare § 1154.

25 Am. Jur. Pl & Pr Forms (Rev), Welfare Laws, Form 46 (claim of lien – by county director of welfare – against cause of action of recipient in pending tort action).

**CJS.**

81 C.J.S., Social Security and Public Welfare §§ 471, 472.

## § 37-33-163. Administration of Office of Disability Determination Services; general powers and duties of executive director.

The Office of Disability Determination Services established by Section 37-33-153 shall be administered by a director appointed by the Executive Director of the State Department of Rehabilitation Services. The director shall devote his full time to the proper administration of the office. In carrying out his duties under this chapter, the director:

(a) Shall enter into agreements on behalf of the State Department of Rehabilitation Services and the State of Mississippi with the federal Social Security Administration or its successor in order to implement the provisions of the federal Social Security Act relating to the determination of disabilities under Title II and Title XVI, and shall enter into contracts necessary to provide such disability determination functions as allowed under applicable federal regulation;

(b) Shall, with the approval of the executive director, make regulations governing Mississippi applications for disability benefits under Title II and Title XVI of the federal Social Security Act, and make such other regulations as are found necessary to implement the functions of the office prescribed under this chapter;

(c) Shall, with the approval of the executive director, establish appropriate subordinate administrative units within the office;

(d) Shall, with the approval of the executive director, be responsible for appointing supervisors, assistants, physicians, and other employees or entering into purchase of service contracts, as are necessary for the efficient performance of the functions of the office, subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq.;

(e) Shall prepare and submit to the board through the executive director annual reports of activities and expenditures, and estimates of the amounts to be made available to the office from all sources; and

(f) Shall, with the approval of the executive director and the board, take such other action as he deems necessary or appropriate to implement the functions of the office.

**HISTORY: Laws, 1983, ch. 521, § 20; Laws, 1989, ch. 544, § 84; Laws, 1990, ch. 522, § 16; Laws, 1991, ch. 608, § 23, eff from and after July 1, 1991, (became law without the Governor's signature).**

**Editor's Notes —** Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

**Federal Aspects—** Social Security Act, Titles II and XVI, see 42 USCS §§ 401 et seq. and §§ 1351 et seq., respectively.

## RESEARCH REFERENCES

**Am. Jur.**

70A Am. Jur. 2d, Social Security and Medicare §§ 181 et seq., 579, 580.

79 Am. Jur. 2d, Welfare Laws §§ 54, 82.

**CJS.**

81 C.J.S., Social Security and Public Welfare §§ 187, 188 et seq., 416–420 et seq.

## § 37-33-165. Powers and duties of Office of Disability Determination Services regarding Social Security Disability Benefits and Supplemental Security Income.

The State Department of Rehabilitation Services, through the Office of Disability Determination Services, shall cooperate pursuant to agreements with the federal Social Security Administration or its successor in carrying out responsibilities relating to the processing and rendering decisions on all Mississippi applications for Social Security Disability Benefits and Supplemental Security Income pursuant to Title II and Title XVI of the federal Social Security Act, as amended, and is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such disability programs and to comply with such conditions and federal regulations as may be necessary to secure the full benefits of such federal statutes and appropriations. In complying with such federal administrative standards, the office shall assume the following responsibilities:

(a) Provide management needed to ensure that the office carries out the disability determination function under the various provisions of the federal Social Security Act so that disability determinations are made accurately and promptly;

(b) Provide an organizational structure, adequate facilities, qualified personnel, medical consultant services and quality assurances;

(c) Furnish reports and records relating to the administration of the disability program;

(d) Submit budgets;

(e) Cooperate with audits;

(f) Ensure that all applicants for and recipients of disability benefits are treated equally;

(g) Account for property used for disability program purposes;

(h) Provide for the advancement of travel expense funds and other services as deemed necessary;

(i) Take part in research and demonstration projects;

(j) Coordinate with other state agencies;

(k) Protect records and confidential information created by the office in performing the disability determination function;

(*l*) Maintain liaison with the medical profession and organizations that may facilitate performing the disability determination function; and

(m) Comply with other provisions of the federal law and regulations in performing the disability determination function in order to promote effective and uniform administration.

**HISTORY: Laws, 1983, ch. 521, § 21; Laws, 1989, ch. 544, § 85; Laws, 1991, ch. 608, § 24, eff from and after July 1, 1991 (became law without the Governor's signature).**

**Editor's Notes** — Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

**Cross References** — Transfer of functions, personnel, appropriations, etc., to Department of Rehabilitation Services, see § 37-33-201.

**Federal Aspects**— Social Security Act, Titles II and XVI, see 42 USCS §§ 401 et seq. and §§ 1351 et seq., respectively.

## RESEARCH REFERENCES

**Am. Jur.**

79 Am. Jur. 2d, Welfare Laws §§ 54, 82.

20 Am. Jur. Proof of Facts 3d 361, Disability Discrimination Under the Americans with Disability Act.

**CJS.**

81 C.J.S., Social Security and Public Welfare §§ 187, 188 et seq., 416–420 et seq.

## § 37-33-167. Authority of Office of Disability Determination Services regarding medical assistance eligibility determinations for certain persons.

The State Department of Rehabilitation Services, through the Office of Disability Determination Services, may enter into agreements with the federal

Social Security Administration or its successor and other state agencies for the purpose of performing eligibility determinations for Medicaid assistance payments for those persons who qualify therefor under Section 43-13-115(4), and may adopt such methods of administration as may be necessary to secure the full benefits of federal appropriations for medical assistance for such persons.

**HISTORY: Laws, 1983, ch. 521, § 22; Laws, 1989, ch. 544, § 86; Laws, 1991, ch. 608, § 25, eff from and after July 1, 1991 (became law without the Governor's signature).**

**Editor's Notes —** Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Subsection (4) of § 43-13-115, referred to in this section, was deleted by Laws of 2000, ch. 301, § 6, effective July 1, 1999.

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Creation of State Department of Rehabilitation Services, see § 37-33-153.

Transfer of functions, personnel, appropriations, etc., to Department of Rehabilitation Services, see § 37-33-201.

### RESEARCH REFERENCES

**Am. Jur.**
79 Am. Jur. 2d, Welfare Laws §§ 54, 82.

**CJS.**
81 C.J.S., Social Security and Public Welfare §§ 187, 188 et seq., 416–420 et seq.

## § 37-33-169. Duties of state treasurer with respect to funds for carrying out disability determination functions under Social Security Act; effect of cessation of federal funding on state's obligation to continue programs.

(1) The State Treasurer is designated as the custodian of all monies received by the state from appropriations made by the federal government or from other sources for the purpose of carrying out disability determination functions under the federal Social Security Act, and he shall establish such special funds and accounts as may be necessary. He shall make disbursements therefrom for disability determination purposes upon requisition by the executive director or, when so authorized, by the director on behalf of the executive director, and upon the issuance of warrants thereunder by the State Fiscal Officer.

(2) If federal funds are no longer available for the purpose of funding programs under the provisions of this chapter, the State of Mississippi shall not be obligated to appropriate funds for the continuance of such programs.

**HISTORY: Laws, 1983, ch. 521, §§ 23, 24; Laws, 1989, ch. 544, § 87; Laws, 1991, ch. 608, § 26, eff from and after July 1, 1991, (became law without the Governor's signature).**

**Editor's Notes —** Section 7-7-2 provides that the words "State Auditor of Public

Accounts," "State Auditor" and "Auditor" appearing in the laws of this tate in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear. Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

**Cross References —** Duties of state treasurer, generally, see § 7-9-9.

### RESEARCH REFERENCES

**Am. Jur.**

70A Am. Jur. 2d, Social Security and Medicare §§ 27, 28, 113, 134, 135, 137, 138, 140, 141.

79 Am. Jur. 2d, Welfare Laws §§ 54, 82.

**CJS.**

81 C.J.S., Social Security and Public Welfare §§ 187, 188 et seq., 416–420 et seq.

## § 37-33-171. Powers and duties of Office on the Deaf and Hard of Hearing.

(1) There is hereby established an Office on Deaf and Hard of Hearing within the State Department of Rehabilitation Services, hereinafter referred to as "ODHH."

(2) The ODHH shall have the following responsibilities:

(a) To work to make interpreter services available to people who are deaf or hard of hearing;

(b) To work to increase the number of qualified interpreters in the state and to increase the certification level of interpreters in the state;

(c) To maintain a registry of available and qualified interpreters in the state;

(d) To provide community outreach, training and education to the public and private sectors, including business, governmental entities, schools and political subdivisions, on issues related to the deaf and hard of hearing;

(e) To serve as a collection point and clearinghouse for information and data related to deafness, including program and service options available for adults and children who are deaf and hard of hearing;

(f) To encourage, participate in and conduct studies and research on issues related to the deaf and hard of hearing;

(g) To provide advice and information to the Mississippi Legislature;

(h) To work with public and private entities, including community and four-year colleges and universities, to accomplish the responsibilities of the ODHH;

(i) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this section.

(3) A service center for ODHH shall be established and operated according to policies established by the ODHH and approved by the State Board of Rehabilitation Services.

(4) The ODHH shall be staffed by an office director, an administrative assistant and full-time and part-time interpreters. These staff members shall

be employees of the State Department of Rehabilitation Services. The ODHH shall also have the power to contract with free lance interpreters as needed.

(5) The ODHH shall establish and utilize an advisory council made up of a majority of members who are deaf or hard of hearing. The first members of the ODHH Advisory Council shall be appointed for a one-year term; subsequent appointments or reappointments shall be made for two-year terms.

(6) The ODHH is authorized to apply for and accept funds from any source and to receive contributions, gifts or any other funds from any private or public source.

(7) The ODHH shall be funded subject to appropriation by the Legislature and in operation by July 1, 1998.

**HISTORY: Laws, 1997, ch. 594, § 1, eff from and after July 1, 1997.**

**Cross References —** State Department of Rehabilitation Services generally, see § 37-33-151 et seq.

## § 37-33-173. Providers of interpreting services for a fee to deaf and hearing impaired required to register with Office on Deaf and Hard of Hearing; standards for registration; appointment of advisory council for development of program rules; confidentiality; penalties.

(1) As used in this section:

(a) "Certification" means the credentials that has been granted or recognized, or both, by the National Association of the Deaf (NAD), the Registry of Interpreters for the Deaf (RID), or any other national certifying body that is recognized by the Mississippi Office on Deaf and Hard of Hearing (ODHH), including, but not limited to: RID/NAD National Interpreter Certification (NIC) (NIC, NIC Advanced, NIC Master), NAD (III, IV or V), Comprehensive Skills Certificate (CSC), Certificate of Interpretation (CI), Certificate of Transliteration (CT), Ed:K-12 (Educational Interpreter Performance Appraisal [EIPA] Level 4 or 5), Certified Deaf Interpreter (CDI). It further includes the documentation that supports the certification level the interpreter has achieved.

(b) "Deaf or hard of hearing person" means a person who has either no hearing or who has significant hearing loss so as to need the services of an interpreter to communicate. "Deafblind person" means a person who has either the dual loss of hearing and sight or who has significant hearing and vision losses so as to need the services of an interpreter to communicate.

(c) "Interpreter training program" means a postsecondary degree program of at least two (2) years in duration that is accredited by the Mississippi Community College Board, the Mississippi institutions of higher learning or a comparable agency in another state.

(d) "Interpreter" means an individual who is certified or credentialed by the National Association of the Deaf, the Registry of Interpreters for the

Deaf, any other national certifying organization which is recognized by the Mississippi Office on Deaf and Hard of Hearing (ODHH), or an individual who holds a valid ODHH-approved quality assurance screening level. Registered interpreters are required to adhere to professional standards and a Code of Ethics as established by the National Association of the Deaf and the Registry of Interpreters for the Deaf.

(e) "Interpreting" is the process of providing accessible communication between and among consumers who are deaf or hard of hearing and those who are hearing. This process includes, but is not limited to, communication between persons who use American Sign Language, English, cued speech and oral communication. It may also include various other modalities that involve visual, gestural and tactile methods.

(f) "Quality assurance level (QA level)" means the level granted through an ODHH-approved quality assurance screening evaluation. It further includes the documentation that supports the QA level the interpreter has achieved.

(g) "Register" means the process whereby the certification and quality assurance level of qualified interpreters are documented and maintained so as to permit those individuals to act as an interpreter for pay in the State of Mississippi.

(h) "Registering authority" means the agency that registers the credentials an interpreter holds, issues the registration documentation to do business in the State of Mississippi, and maintains the records to support the registration. The registering authority is the Mississippi Department of Rehabilitation Services, Office on Deaf and Hard of Hearing.

(i) "EIPA" means the Educational Interpreter Performance Assessment.

(2)(a) Commencing on July 1, 2005, no person, except as noted in subsection (2)(f), shall do any of the following with respect to providing interpreting services for consumers who are deaf or hard of hearing for a fee or other remuneration unless the person is registered with the registering authority:

(i) Engage in the practice of, or offer to engage in the practice of, interpreting for a fee.

(ii) Use the title of interpreter in connection with the person's name.

(iii) Assume the identity of an interpreter.

(iv) Use the title of interpreter in advertisements or descriptions.

(v) Perform the function of or convey the impression that the person is an interpreter.

(b) On or after July 1, 2010, no person shall provide interpreting services and/or represent himself or herself as an interpreter for deaf or hard of hearing consumers for compensation unless such person is registered with the registering authority according to the provisions of this section. To register as an interpreter, one must satisfy one (1) of the following requirements: (i) hold certification recognized by the National Association of the Deaf or the Registry of Interpreters for the Deaf, (ii) hold a quality assurance screening level that is accepted by the Registering Authority, or (iii) score 3.0 or higher on the EIPA.

(c) In situations where there is extreme hardship or where deaf and hard of hearing consumers would be left with no interpreting services, a provisional permit may be granted on an annual basis, provided that documentation of improved interpreting skills is shown.

(d) The registering authority shall be charged with the responsibility for keeping all records and verifying the accuracy of the credentials of each applicant.

(e) Registration shall be for a period of two (2) years, and is renewable.

(f) The following shall be exceptions to paragraphs (a), (b) and (c) of this subsection (2):

(i) A person may engage in the practice of interpreting for religious services without being registered under the provisions of this section.

(ii) Students enrolled in an approved Interpreter Training Program (ITP) are granted a student level registration provided the ITP has an instructor who also is registered under the provisions of this section and the student pays the appropriate fees.

(iii) A graduate of an approved Interpreter Training Program (ITP) can continue to utilize their student level for two (2) years without registering provided they are supervised by an interpreter who is registered under the provisions of this section and the graduate pays the appropriate fees.

(g) The registering authority shall establish an Advisory Council to assist in writing the rules and setting the fees for registering. The Advisory Council shall have three (3) members. One (1) member shall be a deaf consumer; one (1) member shall be a registered interpreter who is actively engaged in the interpreting business; and one (1) member shall be at large. The Advisory Council may ask additional persons who are knowledgeable about the process and business of interpreting to assist them with the business of the council as needed.

(3) The deaf, hard of hearing, or deafblind consumer(s) and the hearing person(s) who employ, contract or otherwise engage the services of an interpreter are the principal parties in the interpreted communication or conversation, and as such hold exclusive rights to any information conveyed therein. Interpreters may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of the conversations, except an interpreter working in conjunction with and paid by a state agency, private organization or primary or secondary school for the therapeutic, educational or rehabilitation purposes. This communication remains confidential, but may be shared with the appropriate agency or educational staff working to assist the deaf, hard of hearing or deafblind person.

(4) The registering authority shall develop forms and assist in referring grievances to the appropriate professional organization and/or authorities.

(5) The registering authority shall have oversight authority regarding in-state quality assurance evaluations to ensure that proper assessment tools, methods and procedures are followed and that evaluators are trained and qualified, as well as the authority to employ personnel as necessary to carry out the provisions of this section.

(6) Whoever is in violation of subsection (2) or (3) is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Two Hundred Dollars ($200.00) nor more than One Thousand Dollars ($1,000.00), and may be imprisoned for not more than six (6) months.

(7) Mississippi shall recognize interpreters who are licensed and/or certified in other states with equal or higher certification than the interpreting levels prescribed by the rules and regulations incumbent in this section. A nonresident interpreter may work up to fifteen (15) days per year without seeking a valid permit from the registering authority. The person who utilizes a nonresident interpreter is charged with the responsibility of verifying the credentials and type of interpreting the interpreter is qualified to do. If a nonresident interpreter works more than fifteen (15) calendar days per year in the State of Mississippi for compensation or other remuneration, the interpreter must become registered under the provisions of this section and pay the appropriate fees.

(8) The registering authority shall establish fair and equitable rules and a fee schedule, not to exceed One Hundred Dollars ($100.00) per annual registration, to cover the cost of administering this section. The rules and fee schedule will be published for the general public.

**HISTORY: Laws, 2005, ch. 402, § 1; Laws, 2010, ch. 479, § 1; Laws, 2014, ch. 397, § 71, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2) by substituting "under subsection (12) or (15) of Section 37-17-6" for "under subsection (11) or (14) of Section 37-17-6." The Joint Committee ratified the corrections at its August 12, 2019, meeting. Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in Laws, 2005, ch. 402, § 1. The subsection (1) designation was added near the beginning of the section. The Joint Committee ratified the correction at its June 29, 2005, meeting.

In the second sentence of (1)(b), the reference to "dual loss of hearing and sign" was changed to read "dual loss of hearing and sight" in 2007 at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The correction was ratified by the Joint Committee, pursuant to Section 1-1-109, at the Committee's August 5, 2008, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an internal statutory reference in subsection (2)(f) by substituting "paragraphs (a), (b) and (c) of this subsection (2)" for "subsection (2)(a) (b) (c)." The Joint Committee ratified the correction at its August 12, 2019, meeting.

**Cross References —** Mississippi Community College Board generally, see § 37-4-1 et seq.

# TRANSFER TO DEPARTMENT OF REHABILITATION SERVICES OF POWERS, DUTIES, ETC., OF DIVISION OF REHABILITATION SERVICES AND DIVISION OF VOCATIONAL REHABILITATION FOR THE BLIND OF THE DEPARTMENT OF HUMAN SERVICES

Sec.
37-33-201. Transfer to Department of Rehabilitation Services and Board of Rehabilitation Services of powers, duties, records, personnel, appropriations etc., of Division of Rehabilitation Services and Division of Vocational Rehabilitation for the Blind of the Department of Human Services.

## § 37-33-201. Transfer to Department of Rehabilitation Services and Board of Rehabilitation Services of powers, duties, records, personnel, appropriations etc., of Division of Rehabilitation Services and Division of Vocational Rehabilitation for the Blind of the Department of Human Services.

All powers, duties and functions of the Department of Human Services and the Board of Human Services that are being exercised or performed by the Division of Rehabilitation Services and the Division of Vocational Rehabilitation for the Blind of the Department of Human Services on June 30, 1991, are transferred to the State Department of Rehabilitation Services and the State Board of Rehabilitation Services on July 1, 1991. All records, property and contractual rights and obligations of, and unexpended balances of appropriations and any other allocations to, the Department of Human Services and the Board of Human Services that relate to the powers, duties and functions exercised or performed by the Division of Rehabilitation Services and the Division of Vocational Rehabilitation for the Blind of the Department of Human Services on June 30, 1991, shall be transferred to the State Department of Rehabilitation Services and the State Board of Rehabilitation Services on or before July 1, 1991. The State Fiscal Officer shall transfer to the State Department of Rehabilitation Services all funds that are allocated to the Division of Rehabilitation Services and the Division of Vocational Rehabilitation for the Blind of the Department of Human Services in House Bill 1536, 1991 Regular Session [Laws, 1991, ch. 47], and such funds shall be used by the State Department of Rehabilitation Services during fiscal year 1992 under the same terms and conditions as specified for those funds in House Bill 1536, 1991 Regular Session [Laws, 1991, ch. 47]. Any positions of the former State Department of Rehabilitation Services and the former Rehabilitation Agency for the Blind that were transferred to the Department of Human Services on July 1, 1989, whose duties primarily involved the providing of rehabilitation services or the providing of related administrative or support services shall be transferred to the State Department of Rehabilitation Services on July 1, 1991, at a level commensurate with the level of each respective position on June 30,

1989. The Department of Human Services and the Board of Human Services shall assist the State Department of Rehabilitation Services and the State Board of Rehabilitation Services with the greatest degree of cooperation to carry out the intent and purpose of this act [Laws, 1991, ch. 608] and to accomplish an orderly transition. The Department of Human Services shall comply with all of the provisions of Section 5 of House Bill 1536, 1991 Regular Session [Laws, 1991, ch. 47], even though this act [Laws, 1991, ch. 608] was introduced under the authority of a different resolution than the one cited in Section 5 of House Bill 1536, 1991 Regular Session [Laws, 1991, ch. 47].

**HISTORY: Laws, 1991, ch. 608, § 1, eff from and after July 1, 1991 (became law without the Governor's signature).**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

## SPECIAL DISABILITY PROGRAMS LAW

| Sec. | |
|---|---|
| 37-33-203. | Short title. |
| 37-33-205. | Definitions. |
| 37-33-207. | Director of Office of Special Disability Programs; powers and duties. |
| 37-33-209. | Acceptance and disposition of gifts and donations; annual report. |
| 37-33-211. | Powers and duties of Office of Special Disability Programs. |
| 37-33-213. | Cooperation with federal government. |
| 37-33-215. | Eligibility for special disability program; services provided. |
| 37-33-217. | Hearings. |
| 37-33-219. | Maintenance; right not transferable or assignable; exempt from claims of creditors. |
| 37-33-221. | Misuse of special disability program lists and records unlawful; misdemeanor. |
| 37-33-223. | Rules and regulations; acceptance of funds from public and private sources. |

### § 37-33-203. Short title.

Sections 37-33-203 through 37-33-223 shall be known as the "Special Disability Programs Law of Mississippi."

**HISTORY: Laws, 2002, ch. 463, § 39, eff from and after July 1, 2002.**

**Cross References —** Vocational Rehabilitation Law of Mississippi, see § 37-33-11 et seq.

Establishment of Office of Special Disability Programs, see § 37-33-153.

### § 37-33-205. Definitions.

(a) "Department" or "agency" means the State Department of Rehabilitation Services;

(b) "Director" means the Director of the Office of Special Disability Programs;

(c) "Executive director" means the Executive Director of the State Department of Rehabilitation Services;

(d) "Independent living services" includes, but is not limited to, the following services in accordance with definitions in the most current amendment of the Rehabilitation Act: (i) information and referral services, independent living skills training, peer counseling including cross-disability peer counseling, and individual and systems advocacy; (ii) counseling services, including psychological, psychotherapeutic and related services; (iii) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of the Rehabilitation Act and of the titles of the Rehabilitation Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities); (iv) rehabilitation technology; (v) mobility training; (vi) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services; (vii) personal assistance services, including attendant care and the training of personnel providing such services; (viii) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation and other support services; (ix) consumer information programs on rehabilitation and independent living services available under the Rehabilitation Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under the Rehabilitation Act; (x) education and training necessary for living in a community and participating in community activities; (xi) supported living; (xii) transportation, including referral and assistance for that transportation and training in the use of public transportation vehicles and systems; (xiii) physical rehabilitation; (xiv) therapeutic treatment; (xv) provision of needed prostheses and other appliances and devices; (xvi) individual and group social and recreational services; (xvii) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options; (xviii) services for children; (xix) services under other federal, state or local programs designed to provide resources, training, counseling or other assistance, of substantial benefit in enhancing the independence, productivity and quality of life of individuals with disabilities; (xx) appropriate preventive services to decrease the need of individuals assisted under the Rehabilitation Act for similar services in the future; (xxi) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and (xxii) such other services as may be necessary and not inconsistent with the provisions of the most current amendment of the Rehabilitation Act;

(e) "Special disability services" includes, but not be limited to those services otherwise provided as independent living services;

(f) "Office" means the Office of Special Disability Programs;

(g) "Regulations" means regulations made by the executive director with the approval of the state board, including regulations pertaining to special disability services;

(h) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living and recreation;

(i) "Rehabilitation engineering services" means applying engineering principles to the design, modification, customization and/or fabrication of assistive technology for individuals with disabilities. An assistive technology device is any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase or improve functional capabilities of individuals with disabilities. The areas of practice for rehabilitation engineering typically encompasses job accommodations, computer access, vehicle modifications, architectural modifications and home modifications, augmentative/alternative communications, environmental controls, positioning devices, seating and mobility, sensory aids and learning accommodations;

(j) "State Board" means the State Board of Rehabilitation Services.

**HISTORY: Laws, 2002, ch. 463, § 40, eff from and after July 1, 2002.**

**Cross References —** Vocational Rehabilitation Law of Mississippi, see § 37-33-11 et seq.

State Department of Rehabilitation services generally, see § 37-33-151 et seq.

State Board of Rehabilitation Services, see § 37-33-155.

Powers and duties of the executive director of the State Department of Rehabilitation Services, see § 37-33-161.

## § 37-33-207. Director of Office of Special Disability Programs; powers and duties.

The Office of Special Disability Programs established by Section 37-33-153 shall be administered by a director appointed by the executive director in conformity with policies adopted by the department. In carrying out his or her other duties under the Special Disability Programs Law, the director:

(a) Shall, with the approval of the executive director, make regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility and investigations and determinations thereof for rehabilitation services through special disability programs, procedures for fair hearings and such other regulations as are found necessary to carry out the purposes of that law;

(b) Shall, with the approval of the executive director, establish appropriate subordinate administrative units within the office;

(c) Shall, with the approval of the executive director, recommend for appointment such personnel as may be necessary for the efficient performance of the functions of the office;

(d) Shall prepare and submit to the state board, through the executive director, annual reports of activities and expenditures and, before each regular session of the Legislature, shall submit estimates of sums required for carrying out the Special Disability Programs Law and estimates of the amounts to be made available for this purpose from all sources;

(e) Shall, if the executive director so authorizes, make certifications on behalf of the executive director for the disbursement of funds available for rehabilitation services;

(f) Shall, with the approval of the executive director, appoint boards to serve as the governing authority of centers for independent living or other entities as required by federal law and regulations;

(g) Shall, with the approval of the executive director, take such other action as he or she deems necessary or appropriate to carry out the purposes of the Special Disability Programs Law;

(h) May, with the approval of the executive director, delegate to any officer or employee of the office such of his or her powers and duties, except the making of regulations and the making of recommendations for appointment of personnel, as he or she finds necessary to carry out the purposes of the Special Disability Programs Law.

**HISTORY: Laws, 2002, ch. 463, § 41, eff from and after July 1, 2002.**

**Cross References** — Establishment of Office of Special Disability Programs, see § 37-33-153.

Powers and duties of the executive director of the State Department of Rehabilitation Services, see § 37-33-161.

## § 37-33-209. Acceptance and disposition of gifts and donations; annual report.

The director, with the approval of the executive director, may accept and use gifts and donations made unconditionally or otherwise for carrying out the purposes of the Rehabilitation Law, from either public or private sources. Gifts made under such conditions as in the judgment of the director, with the approval of the executive director, are proper and consistent with the provisions of that law may be so accepted and shall be held, invested, reinvested and used in accordance with the conditions of the gift. All monies received as gifts or donations, except conditional gifts requiring other treatments, shall be deposited in the State Treasury and shall constitute a permanent fund to be called the "Special Fund for the Rehabilitation of Individuals with Disabilities through Special Disability Services" and shall be used by the office for such purposes. The director shall prepare and submit a report annually to the Legislature, through the executive director, setting forth the condition of rehabilitation of disabled persons in Mississippi, the expenditures made from state and federal funds in carrying out the provisions of that law or its purpose, and a detailed statement of all gifts and donations offered and accepted, together with the names of donors and the respective amounts prescribed by each and all the disbursements made therefrom.

**HISTORY: Laws, 2002, ch. 463, § 42, eff from and after July 1, 2002.**

**Cross References** — Powers and duties of the executive director of the State Department of Rehabilitation Services, see § 37-33-161.

## § 37-33-211. Powers and duties of Office of Special Disability Programs.

(1) The Office of Special Disability Programs shall assist individuals with the most severe disabilities determined to be eligible and in carrying out the purposes of the Rehabilitation Act is authorized among other things:

(a) To cooperate with other departments, agencies and institutions, both public and private, in providing rehabilitation services, in studying the problems involved therein, and in establishing, programs and services as may be necessary or desirable; and

(b) To conduct research and compile statistics relating to the provision of rehabilitation services to individuals with disabilities.

(2) The Office of Special Disability Programs shall utilize federal grant money through Title VII of the most current amendment of the federal Rehabilitation Act to assist those individuals with the most severe disabilities. The office will work to provide medical equipment, home modifications, vehicle modifications and other independent living services to assist those individuals determined to be eligible according to the regulations of Title VII of the most current amendment of the Rehabilitation Act to remain in or return to mainstream society.

(3) The State Attendant Care Program created by the Mississippi Legislature in 1985 to provide personal care services for people who are severely disabled may function under the Office of Special Disability Programs. Personal care services will be provided to those individuals determined to be eligible by the office in accordance with policies established by the department.

(4) The Office of Special Disability Programs shall provide special disability services through programs developed with other state and federal agencies. The individuals and services provided shall be in conformity with any program policies and eligibility categories established by the programs.

**HISTORY: Laws, 2002, ch. 463, § 43, eff from and after July 1, 2002.**

**Cross References** — Establishment of Office of Special Disability Programs, see § 37-33-153.

**Federal Aspects**— Federal Rehabilitation Act, see 29 USCS §§ 701 et seq.

## § 37-33-213. Cooperation with federal government.

The department, through the office, shall cooperate, under agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to special disability programs, and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of those agreements or plans for special disability programs and comply with such conditions as may be necessary to secure the full benefits of those federal statutes and appropriations, administer any legislation under federal statutes and appropriations that is enacted by the State of Mississippi, direct the disbursement and administer the use of all funds provided by the federal government or this state for the persons of this state, and do all things necessary to ensure the provision of services to the person served by the special disability programs.

**HISTORY: Laws, 2002, ch. 463, § 44, eff from and after July 1, 2002.**

**Cross References** — Establishment of Office of Special Disability Programs, see § 37-33-153.

## § 37-33-215. Eligibility for special disability program; services provided.

The Office of Special Disability Programs shall provide services to any individual who is determined to meet the eligibility criteria for receiving services through one or more special disability programs. The services provided through the Office of Special Disability Programs shall be those defined as special disability services and independent living services.

**HISTORY: Laws, 2002, ch. 463, § 45, eff from and after July 1, 2002.**

**Cross References** — Establishment of Office of Special Disability Programs, see § 37-33-153.

## § 37-33-217. Hearings.

Any individual applying for or receiving services provided by the Office of Special Disability Programs who is aggrieved by any action or inaction of the office shall be entitled, in accordance with regulations promulgated by the department, to a fair hearing.

**HISTORY: Laws, 2002, ch. 463, § 46, eff from and after July 1, 2002.**

## § 37-33-219. Maintenance; right not transferable or assignable; exempt from claims of creditors.

The right of an individual to maintenance under the Office of Special Disability Programs shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors.

**HISTORY: Laws, 2002, ch. 463, § 47, eff from and after July 1, 2002.**

**Cross References** — Establishment of Office of Special Disability Programs, see § 37-33-153.

## § 37-33-221. Misuse of special disability program lists and records unlawful; misdemeanor.

It shall be unlawful, except for purposes directly connected with the administration of the Office of Special Disability Programs and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning persons applying for or receiving services under the Office of Special Disability Programs, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties, except in response to summons, subpoena or other order of a court. Any violation of this section shall be a misdemeanor and punishable accordingly.

**HISTORY: Laws, 2002, ch. 463, § 48, eff from and after July 1, 2002.**

**Cross References —** Establishment of Office of Special Disability Programs, see § 37-33-153.

### § 37-33-223. Rules and regulations; acceptance of funds from public and private sources.

The Department of Rehabilitation Services shall promulgate rules and regulations necessary for the proper administration of the Office of Special Disability Programs and shall establish guidelines for eligibility, services, training and evaluation under the program. The State Department of Rehabilitation Services may accept funds from public and private sources for the implementation of Sections 37-33-203 through 37-33-223.

**HISTORY: Laws, 2002, ch. 463, § 49, eff from and after July 1, 2002.**

**Cross References —** State Department of Rehabilitation Services generally, see § 37-33-151 et seq.

## TREATMENT AND REHABILITATION SERVICES FOR SPINAL CORD AND HEAD INJURIES

| Sec. | |
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| 37-33-251. | Legislative intent. |
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### § 37-33-251. Legislative intent.

It is the intent of the Legislature to provide for the development of a coordinated rehabilitation program for those persons severely disabled by spinal cord injuries or traumatic brain injuries. Further, it is intended that permanent paralysis and brain damage be prevented whenever possible through early identification of spinal cord/brain injuries, skilled emergency evaluation procedures, and proper medical and rehabilitative treatment. The goal of this program shall be to enable individuals severely disabled by spinal cord injury or traumatic brain injury to resume the activities of daily living and reintegrate with the community with as much dignity and independence as possible. For those persons who cannot achieve complete independence, supportive services are needed in order for them to live as normally as possible.

**HISTORY: Laws, 1996, ch. 505, § 1; Laws, 1997, ch. 491, § 1, eff from and after July 1, 1997.**

### RESEARCH REFERENCES

**ALR.**
Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

**Am. Jur.**
68 Am. Jur. 2d, Schools §§ 480 et seq.

**CJS.**
81 C.J.S., Social Security and Public Welfare §§ 207, 208, 231–235.

## § 37-33-253. Definitions.

As used in Sections 37-33-251 through 37-33-263:

(a) "Department" means the State Department of Rehabilitation Services.

(b) "Rehabilitation center" means a facility which provides intermediate care and stresses rehabilitation for persons with spinal cord injuries or traumatic brain injuries.

(c) "Transitional living facility" means a facility which provides a temporary, structured residential environment for those individuals with spinal cord injuries or traumatic brain injuries in a training or educational program, in order to prepare such individuals to live independently.

(d) "Traumatic brain injury" means an insult to the skull, brain, or its covering, resulting from external trauma which produces an altered state of consciousness or anatomic, motor, sensory or cognitive/behavioral deficits.

(e) "Spinal cord injury" means an acute traumatic insult to the spinal cord, not of a degenerative or congenital nature, but caused by an external trauma resulting in any degree of motor or sensory deficit.

**HISTORY: Laws, 1996, ch. 505, § 2; Laws, 1997, ch. 491, § 2, eff from and after July 1, 1997.**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

## § 37-33-255. Transitional living facilities.

The department may, if indicated, establish an appropriate number of transitional living facilities for individuals who need attendant care, who are in adjustment periods, who require a structured environment, or who are in retraining or educational programs. All residents shall use the transitional living facility as a temporary measure, and not as a permanent home or domicile, and shall pay a monthly fee based on ability to pay.

**HISTORY: Laws, 1996, ch. 505, § 3; Laws, 1997, ch. 491, § 3, eff from and after July 1, 1997.**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

### RESEARCH REFERENCES

**ALR.**

Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

**Am. Jur.**

40A Am. Jur. 2d, Hospitals and Asylums §§ 1 et seq.

44 Am. Jur. 2d, Insurance § 1499.

71 Am. Jur. 2d, State and Local Taxation §§ 269, 272-274.

## § 37-33-257. Eligibility survey, conducted annually.

The department shall conduct an annual survey of nursing homes in the state to determine the number of individuals fifty-five (55) years of age and under who reside in such homes due to a spinal cord injury or traumatic brain injury. All individuals identified in such a survey shall be evaluated by the department as to their rehabilitation potential, and any individual who may benefit from rehabilitation services shall be given an opportunity to participate in an appropriate rehabilitation program for which he may be eligible.

**HISTORY: Laws, 1996, ch. 505, § 4; Laws, 1997, ch. 491, § 4, eff from and after July 1, 1997.**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

## § 37-33-259. Advisory council.

(1) There is created within the department an Advisory Council on Spinal Cord Injuries and Traumatic Brain Injuries composed of a physician with expertise in areas related to the care and rehabilitation of individuals with spinal cord injuries or traumatic brain injuries or the prevention of spinal cord and traumatic brain injuries, a professional in a clinical rehabilitation setting, a representative designated by the Mississippi Head Injury Association, a representative designated by the Mississippi Paralysis Association, three (3) individuals with spinal cord injuries or traumatic brain injuries, and three (3) family members of individuals with spinal cord or traumatic brain injuries.

(2) Members of the council shall be appointed by the Executive Director of the State Department of Rehabilitation Services and shall serve for terms of four (4) years, except that five (5) members of the first appointed council shall serve for two (2) years.

(3) The council shall meet a minimum of twice per year, and members shall be entitled to uniform per diem and travel expenses in accordance with the provisions of Sections 25-3-69 and 25-3-41, Mississippi Code of 1972.

(4) The council shall provide advice and expertise to the department in the preparation, implementation and periodic review of the coordinated rehabilitation program as set forth in Sections 37-33-251 through 37-33-263.

**HISTORY: Laws, 1996, ch. 505, § 5; Laws, 1997, ch. 491, § 5, eff from and after July 1, 1997.**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

Powers and duties of executive director of the State Department of Rehabilitation Services, see § 37-33-161

### RESEARCH REFERENCES

**ALR.**

Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

**Am. Jur.**

68 Am. Jur. 2d, Schools §§ 479 et seq.

## § 37-33-261. Funding.

(1) Such assessments as are collected under subsections (1) and (2) of Section 99-19-73, shall be deposited in a special fund that is created in the State Treasury and designated the Spinal Cord and Head Injury Trust Fund. Unexpended amounts remaining in the Spinal Cord and Head Injury Trust Fund at the end of a fiscal year shall not lapse into the State General Fund, and all interest received from the investment of monies in the trust fund shall be credited to the trust fund and shall not be deposited into the State General Fund. Monies deposited in the fund shall be expended beginning in fiscal year 1997 by the Department of Rehabilitation Services as authorized and appropriated by the Legislature for the following purposes:

Providing the cost of care for spinal cord and traumatic brain injury as a payer of last resort to residents of the State of Mississippi for a multilevel program of rehabilitation as prescribed in Sections 37-33-251 through 37-33-259. Authorization of expenditures for spinal cord injury care and traumatic brain injury care from this trust fund shall be made only by the Department of Rehabilitation Services. Authorized expenditures shall include three (3) or more of the following forms of assistance: acute care; rehabilitation; transitional living; assistive technology services, devices and equipment; respite care; transportation; housing; home modifications; and other services and/or assistance as deemed appropriate by the advisory council for individuals with spinal cord injuries or traumatic brain injuries to accomplish a successful re-entry into the community. Such activities may also include expanding the public's awareness of how spinal cord and traumatic brain injuries occur and how they can be prevented and identifying advanced treatment and prevention techniques. Other authorized expenditures may include costs associated with salary and other support costs for personnel sufficient to carry out the program or to subcontract all or part of the authorized services, and to pay the travel and meeting expenses of the advisory council.

(2) The department shall issue a report to the Legislature and the Governor by January 1 of each year, summarizing the activities supported by the trust fund.

**HISTORY: Laws, 1996, ch. 505, § 6; Laws, 1997, ch. 491, § 6; Laws, 1998, ch. 443, § 1, eff from and after passage (approved March 23, 1998).**

**Cross References —** State Department of Rehabilitation services generally, see § 37-33-151 et seq.

### RESEARCH REFERENCES

**ALR.**

Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

## § 37-33-263. Creation of spinal cord and traumatic brain injuries registry.

(1) The State Board of Health shall establish in the State Department of Health a program to:

(a) Identify and investigate spinal cord and traumatic brain injuries; and

(b) Maintain a central registry for cases of spinal cord and traumatic brain injuries.

(2) The State Department of Health shall design the registry program so that it will:

(a) Provide information in a central data bank of accurate, precise and current information on spinal cord and traumatic brain injuries;

(b) Provide for the collection of such data to identify risk factors and causes of spinal cord and traumatic brain injuries;

(c) Provide information for early identification of spinal cord and traumatic brain injuries:

(d) Provide for the dissemination of such data for the purposes of care and support for persons with spinal cord and traumatic brain injuries;

(e) Provide for the analysis of such data for the purpose of prevention.

(3) The State Board of Health shall adopt rules, regulations and procedures to govern the operation of the registry program and to carry out the intent of this section.

(4) The State Board of Health in its rules and regulations shall specify the types of information to be provided to the spinal cord and traumatic brain injuries registry and the persons and entities who are required to provide such information to the registry.

(5) The State Board of Health by rule shall prescribe the manner in which records and other information are made available to the State Department of Health.

(6) Information collected and analyzed by the State Department of Health under this section shall be placed in a central registry to facilitate research and to maintain security.

(a) Data obtained under this section directly from the medical records of a patient is for the confidential use of the State Department of Health and the persons or public or private entities that the State Department of Health determines are necessary to carry out the intent of this section. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data under this section.

(b) Information that may identify an individual whose medical records have been used for obtaining data under this section is not available for public inspection under the Mississippi Public Records Act of 1983.

(c) Statistical information collected under this section is public information.

(7) The State Department of Health may use the registry to:

(a) Investigate the causes of spinal cord and traumatic brain injuries and other health conditions as authorized by statute;

(b) Design and evaluate measures to prevent the occurrence of spinal cord and traumatic brain injuries, and other conditions;

(c) Conduct other investigations and activities necessary for the State Board of Health and the State Department of Health to fulfill their obligation to protect the public health; and

(d) Identify those persons who cannot achieve complete independence after suffering spinal cord and traumatic brain injuries.

(8) Any person or entity who misuses the information provided to the registry shall be subject to a civil penalty of Five Hundred Dollars ($500.00) for each such failure or misuse. Such penalty shall be assessed and levied by the State Board of Health after a hearing, and all such penalties collected shall be deposited into the State General Fund.

(9) The State Health Officer may appoint or delegate his authority to establish and appoint an advisory council, for the purposes of this section, to the State Department of Rehabilitation Services Advisory Council on Spinal Cord Injuries and Traumatic Brain Injuries. The advisory council may designate a subcommittee to act as the registry's advisor. The State Board of Health shall consult and be advised by the committee on the promulgation of rules, regulations and procedures for the purposes of this section.

**HISTORY: Laws, 1997, ch. 491, § 7, eff from and after July 1, 1997.**

**Cross References** — Mississippi Public Records Act, see § 25-61-1 et seq.
State Department of Rehabilitation services generally, see § 37-33-151 et seq.
State Board of Health generally, see § 41-3-1 et seq.

# CHAPTER 35.

# ADULT EDUCATION

Sec.

37-35-1. Mississippi Community College Board to develop program of adult education.
37-35-3. Establishment and maintenance of adult education classes; levy of ad valorem tax; High School Equivalency Diploma programs.
37-35-5. Acceptance of federal funds.
37-35-7. Utilization of state appropriations.
37-35-9. High School Equivalency diploma testing program; administration and supervision.
37-35-11. General educational development preparatory classes; policies and procedures; funding; annual report.
37-35-13. Criminal penalties for violations of High School Equivalency Diploma security procedures.

## § 37-35-1. Mississippi Community College Board to develop program of adult education.

The Mississippi Community College Board is authorized and directed to prescribe rules and regulations, which said rules and regulations when properly promulgated and not inconsistent with the provisions of this chapter shall have the force and effect of law, under which a program may be established, maintained and supervised for the purpose of supplying educational advantages to adults, which shall include all persons sixteen (16) years of age and over, not enrolled in school or required to be enrolled in school by the compulsory school attendance law, Section 37-13-91, Mississippi Code of 1972. The aim and purpose of such a program shall be to reduce illiteracy and to provide a general plan of continuing education in the fundamental principles of democratic society, citizenship, public affairs, forums, home family life, arts and crafts, general cultural subjects with priority to be given to academic training through high school and training in technical skills and trades needed by industries, and such other subjects as the Mississippi Community College Board may prescribe for the social and economic advancement of adults. The Mississippi Community College Board is authorized to employ such additional supervisory, secretarial and clerical personnel as may be necessary to carry out the provisions of this chapter.

**HISTORY: Codes, 1942, § 6240; Laws, 1940, ch. 177; Laws, 1960, ch. 293; Laws, 1992, ch. 538, § 1; Laws, 1993, ch. 375, § 1; Laws, 2014, ch. 397, § 33, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 1992, ch. 538, § 6, effective from and after passage (approved May 14, 1992) provides as follows:

"SECTION 6. The State Department of Education shall research and study the transfer of the administration of adult education programs mandated under Laws, 1992, ch. 538, and shall make a report to the Legislature and the Governor on or before February 15, 1993, regarding recommendations for corrective legislation necessary to legally and effectively implement said programs."

**Cross References** — Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Junior colleges, see § 37-29-1 et seq.

Provisions of this section not to prevent or interfere with independent operation or administration of adult education under Department of Human Services, including programs administered by Governor's Office of Literacy and Workplace Enhancement, see § 37-35-5.

## § 37-35-3. Establishment and maintenance of adult education classes; levy of ad valorem tax; High School Equivalency Diploma programs.

(1) The board of trustees of any school district, including any community/junior college, may establish and maintain classes for adults, including general educational development classes, under the regulations authorized in this chapter and pursuant to the standards prescribed in subsection (3). The property and facilities of the public school districts may be used for this purpose where such use does not conflict with uses already established.

(2) The trustees of any school district desiring to establish such program may request the taxing authority of the district to levy additional ad valorem taxes for the support of this program. The board of supervisors, in the case of a county school district, a special municipal separate school district, or a community/junior college district, and the governing authority of any municipality, in the case of a municipal separate school district, is authorized, in its discretion, to levy a tax not exceeding one (1) mill upon all the taxable property of the district for the support of this program. The tax shall be in addition to all other taxes authorized by law to be levied. In addition to the funds realized from any such levy, the board of trustees of any school district is authorized to use any surplus funds that it may have or that may be made available to it from local sources to supplement this program.

(3)(a) Any student participating in an approved High School Equivalency Diploma Option program administered by a local school district or a local school district with an approved contractual agreement with a community/junior college or other local entity shall not be considered a dropout. Students in such a program administered by a local school district shall be considered as enrolled within the school district of origin for the purpose of enrollment for minimum program funding only. Such students shall not be considered as enrolled in the regular school program for academic or programmatic purposes.

(b) Students participating in an approved High School Equivalency Diploma Option program shall have an individual career plan developed at the time of placement to insure that the student's academic and job skill needs will be met. The Individual Career Plan will address, but is not limited to, the following:

(i) Academic/instructional needs of the student;

(ii) Job readiness needs of the student; and

(iii) Work experience program options available for the student.

(c) Students participating in an approved High School Equivalency Diploma Option program may participate in existing job and skills development programs or in similar programs developed in conjunction with the High School Equivalency Diploma Option program and the vocational director.

(d) High School Equivalency Diploma Option programs may be operated by local school districts or may be operated by two (2) or more adjacent school districts, pursuant to a contract approved by the State Board of Education. When two (2) or more school districts contract to operate a High School Equivalency Diploma Option program, the school board of a district designated to be the lead district shall serve as the governing board of the High School Equivalency Diploma Option program. Transportation for students placed in the High School Equivalency Diploma Option program shall be the responsibility of the school district of origin. The expense of establishing, maintaining and operating such High School Equivalency Diploma programs may be paid from funds made available to the school district through contributions, minimum program funds or from local district maintenance funds.

(e) The State Department of Education will develop procedures and criteria for placement of a student in the High School Equivalency Diploma Option programs. Students placed in High School Equivalency Diploma Option programs shall have parental approval for such placement and must meet the following criteria:

(i) The student must be at least sixteen (16) years of age;

(ii) The student must be at least one (1) full grade level behind his or her ninth grade cohort or must have acquired less than four (4) Carnegie units;

(iii) The student must have taken every opportunity to continue to participate in coursework leading to a diploma; and

(iv) The student must be certified to be eligible to participate in the GED course by the school district superintendent, based on the developed criteria.

(f) Students participating in an approved High School Equivalency Diploma Option program, who are enrolled in subject area courses through January 31 in a school with a traditional class schedule or who are enrolled in subject area courses through October 31 or through March 31 in a school on a block schedule, shall be required to take the end-of-course subject area tests for those courses in which they are enrolled.

**HISTORY: Codes, 1942, § 6240; Laws, 1940, ch. 177; Laws, 1960, ch. 293; Laws, 1997, ch. 604, § 2; Laws, 2010, ch. 362, § 1; Laws, 2011, ch. 423, § 1; Laws, 2014, ch. 398, § 5, eff from and after July 1, 2014.**

**Cross References —** State Department of Education generally, see § 37-3-1 et seq. Provisions of this section not to prevent or interfere with independent operation or administration of adult education under Department of Human Services, including programs administered by Governor's Office of Literacy and Workplace Enhancement, see § 37-35-5.

## § 37-35-5. Acceptance of federal funds.

For the purpose of supporting the adult education program authorized in this chapter, the Mississippi Community College Board is authorized to accept for and on behalf of the State of Mississippi, federal funds made available to the state for the purpose of adult education. Such funds shall be used by the Mississippi Community College Board for the administration of the program and to supplement the local funds made available by any school district, provided such program is conducted under the rules and regulations established by the Mississippi Community College Board. All programs of adult basic education administered by the State Department of Education on July 1, 1992, shall be continued with at least the same level of funding, until July 1, 1995, provided that such programs are financially and programmatically sound and meet the requirements of federal rules and regulations. Nothing in Sections 37-35-1 through 37-35-11 shall be interpreted in a manner to prevent or interfere with the independent operation or administration of adult education under the Department of Human Services, including, but not limited to, those programs administered by the Governor's Office of Literacy and Workplace Enhancement, or of any general educational development preparatory instruction and testing administered by a school district in an alternative school program.

**HISTORY: Codes, 1942, § 6240; Laws, 1940, ch. 177; Laws, 1960, ch. 293; Laws, 1992, ch. 538, § 2; Laws, 1993, ch. 375, § 2; Laws, 1997, ch. 604, § 3; Laws, 2014, ch. 397, § 34, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 1992, ch. 538, § 6, effective from and after passage (approved May 14, 1992) provides as follows:

"SECTION 6. The State Department of Education shall research and study the transfer of the administration of adult education programs mandated under Laws, 1992, ch. 538, and shall make a report to the Legislature and the Governor on or before February 15, 1993, regarding recommendations for corrective legislation necessary to legally and effectively implement said programs."

**Cross References —** State Department of Education generally, see § 37-3-1 et seq.

Mississippi Community College Board generally, see § 37-4-1 et seq.

Department of Human Services generally, see § 43-1-1 et seq.

## § 37-35-7. Utilization of state appropriations.

Any funds that may be appropriated by the State Legislature for the purpose of carrying out a program of adult education may be used to supplement local funds or to meet the minimum requirements of the federal government for a program of adult education in the state, provided such program is conducted under the rules and regulations established by the Mississippi Community College Board.

**HISTORY: Codes, 1942, § 6240; Laws, 1940, ch. 177; Laws, 1960, ch. 293; Laws, 1992, ch. 538, § 3; Laws, 2014, ch. 397, § 35, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 1992, ch. 538, § 6, effective from and after passage (approved May 14, 1992) provides as follows:

"SECTION 6. The State Department of Education shall research and study the transfer of the administration of adult education programs mandated under Laws, 1992, ch. 538, and shall make a report to the Legislature and the Governor on or before February 15, 1993, regarding recommendations for corrective legislation necessary to legally and effectively implement said programs."

**Cross References** — Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Provisions of this section not to prevent or interfere with independent operation of adult education under Department of Human Services, including Governor's Literacy and Workplace Enhancement programs, see § 37-35-5.

### § 37-35-9. High School Equivalency diploma testing program; administration and supervision.

The Mississippi Community College Board is authorized to develop and establish general educational development preparatory classes in secondary schools and community/junior colleges and to provide financial assistance from the state for the specific purpose of preparing persons sixteen (16) years of age and older, not enrolled in school or required to be enrolled in school by the Compulsory School Attendance Law (Section 37-13-91) to successfully write the general educational development test and earn a certificate of equivalency which is equivalent to the high school diploma.

The Mississippi Community College Board is authorized to administer the High School Equivalency Diploma Testing Program in accordance with the policies and guidelines of the High School Equivalency Diploma Testing Service of the American Council on Education. Such administration shall include the approval of rules and regulations for the administration, scoring, issuing of transcripts and awarding of diplomas for the High School Equivalency Diploma Testing Program. The Mississippi Community College Board is hereby authorized to assess a fee in an amount not to exceed Five Dollars ($5.00) for issuing an additional copy of a High School Equivalency Diploma transcript.

This program shall be administered by the Mississippi Community College Board through the secondary schools and community/junior colleges as the local needs indicate and are practical.

Full and general supervision over the program by the Mississippi Community College Board shall insure that duplication of effort by secondary schools and community/junior colleges will be eliminated; however, nothing in this section shall be construed to prohibit a school district from implementing a program of High School Equivalency Diploma preparatory instruction.

Adult students for general educational development preparatory classes may be accepted by schools and junior colleges from any area of the state provided students are bona fide residents of Mississippi.

Instructors, counselors and supervisors utilized in the teaching of general educational development preparatory classes shall be licensed in the appropriate area as required by the Mississippi Community College Board.

**HISTORY: Laws, 1974, ch. 347, § 1; Laws, 1992, ch. 538, § 4; Laws, 1993, ch.**

**375, § 3; Laws, 1997, ch. 604, § 4; Laws, 2002, ch. 595, § 1; Laws, 2014, ch. 397, § 36; Laws, 2014, ch. 398, § 6, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Section 36 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014, 9:10 a.m.), amended this section. Section 6 of ch. 398, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014, 9:27 a.m.), also amended this section. As set out above, this section reflects the language of Section 6 of ch. 398, Laws of 2014, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Editor's Notes —** Laws of 1992, ch. 538, § 6, effective from and after passage (approved May 14, 1992) provides as follows:

"SECTION 6. The State Department of Education shall research and study the transfer of the administration of adult education programs mandated under 1992, ch. 538, and shall make a report to the Legislature and the Governor on or before February 15, 1993, regarding recommendations for corrective legislation necessary to legally and effectively implement said programs."

**Cross References —** Mississippi Community College Board generally, see §§ 37-4-1 et seq.

Junior colleges generally, see § 37-29-1 et seq.

Provisions of this section not to prevent or interfere with independent operation of adult education under Department of Human Services, including Governor's Literacy and Workplace Enhancement programs, see § 37-35-5.

Use of funds provided under this section to obtain federal matching funds; other allocation requirements pertaining to funds provided under this section; temporary nature of classes funded under this section, see § 37-35-11.

## OPINIONS OF THE ATTORNEY GENERAL

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

## § 37-35-11. General educational development preparatory classes; policies and procedures; funding; annual report.

The Mississippi Community College Board shall determine policies and procedures for administration of this program.

Funds provided under this section and Section 37-35-9 can be used for matching federal funds if such become available.

Funds provided under this section and Section 37-35-9 shall be allocated to schools and community/junior colleges on an average of twelve (12) to fifteen (15) adult students per class in average attendance, for one hundred fifty (150) hours maximum instruction per class. Funds will be allocated on a basis of target population by county for general educational development preparatory classes based on adults who have from nine (9) to eleven (11) years of schooling as indicated by the 1990 census. Schools and community/junior colleges will receive one hundred percent (100%) of the cost of general educational development preparatory classes. All classes funded under this section and Section 37-35-9 shall be considered temporary and shall be renewed only as long as participation is adequate for continued funding.

An annual report on program activities, adult participation and results shall be prepared by the Mississippi Community College Board and submitted to the Mississippi Legislature within the first month of regular legislative session each year.

**HISTORY: Laws, 1974, ch. 347, § 2; Laws, 1992, ch. 538, § 5; Laws, 1993, ch. 375, § 4; Laws, 2014, ch. 397, § 37, eff from and after July 1, 2014.**

**Editor's Notes —** Laws of 1992, ch. 538, § 6, effective from and after passage (approved May 14, 1992) provides as follows:

"SECTION 6. The State Department of Education shall research and study the transfer of the administration of adult education programs mandated under Laws, 1992, ch. 538, and shall make a report to the Legislature and the Governor on or before February 15, 1993, regarding recommendations for corrective legislation necessary to legally and effectively implement said programs."

**Cross References —** Mississippi Community College Board generally, see §§ 37-4-1 et seq.

## § 37-35-13. Criminal penalties for violations of High School Equivalency Diploma security procedures.

(1) It is unlawful for anyone knowingly and willfully to do any of the following acts regarding the High School Equivalency Diploma:

(a) Give an examinee access to test questions prior to testing;

(b) Copy or reproduce all or any portion of any secure test booklet or completed test;

(c) Coach an examinee during testing or alter or interfere with an examinee's response in any way;

(d) Make an answer key available to an examinee;

(e) Forge, counterfeit or alter a transcript, diploma, grade report or High School Equivalency Diploma test;

(f) Fail to account for all secure test materials before, during and after testing;

(g) Participate in, direct, aid, counsel, assist in, encourage, fail to report any of the acts prohibited in this section, or engage in any activity with the intent to fraudulently obtain a High School Equivalency Diploma.

(2) Any person violating any provisions of subsection (1) of this section is guilty of a misdemeanor and upon conviction shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned for not more than ninety (90) days, or both. Upon conviction, the Mississippi Community College Board may suspend or revoke the High School Equivalency Diploma credential of the person convicted.

(3) The district attorney or county prosecuting attorney shall investigate allegations of violations of this section, either on their own initiative or

following the receipt of an allegation, or at the request of the Executive Director of the Mississippi Community College Board.

(4) The district attorney or county prosecuting attorney shall furnish to the Executive Director of the Mississippi Community College Board a report of the findings of any investigation conducted pursuant to this section.

(5) Nothing in this section may be construed to prohibit or interfere with the responsibilities of the Mississippi Community College Board in test development or selection, test form construction, standard setting, test scoring and reporting, or any other related activities which in the judgment of the Executive Director of the Mississippi Community College Board are necessary and appropriate.

**HISTORY: Laws, 2005, ch. 405, § 1; Laws, 2014, ch. 397, § 38; Laws, 2014, ch. 398, § 7, eff from and after July 1, 2014.**

**Joint Legislative Committee Note —** Section 38 of ch. 397, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014, 9:10 a.m.), amended this section. Section 7 of ch. 398, Laws of 2014, effective from and after July 1, 2014 (approved March 19, 2014, 9:27 a.m.), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 398, Laws of 2014, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Cross References —** Mississippi Community College Board generally, see §§ 37-4-1 et seq.

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